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RH/CL

P.L.2017, CHAPTER 237, *approved September 13, 2017*  
Assembly, No. 3433 (*Third Reprint*)

1 AN ACT concerning access by fiduciaries to digital assets and  
2 supplementing Title 3B of the New Jersey Statutes.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Short Title. This act shall be known and may be cited as the  
8 “Uniform Fiduciary Access to Digital Assets Act.”

9  
10 2. Definitions. As used in this act:

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

14 “Agent” means an attorney-in-fact granted authority under a  
15 durable or nondurable power of attorney.

16 “Carries” means engages in the transmission of an electronic  
17 communication.

18 “Catalogue of electronic communications” means information  
19 that identifies each person with which a user has had an electronic  
20 communication, the time and date of the communication, and the  
21 electronic address of the person.

22 “Content of an electronic communication” means information  
23 concerning the substance or meaning of the communication which:

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

25 (b) is in electronic storage by a custodian providing an  
26 electronic communication service to the public or is carried or  
27 maintained by a custodian providing a remote computing service to  
28 the public; and

29 (c) is not readily accessible to the public.

30 “Court” means the Probate Part of the Chancery Division of the  
31 Superior Court. <sup>2</sup>For the purposes of this act, “court” includes the  
32 Surrogate’s Court acting within the scope of its authority pursuant  
33 to statute or the Rules of Court.<sup>2</sup>

34 “Custodian” means a person that carries, maintains, processes,  
35 receives, or stores a digital asset of a user.

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AJU committee amendments adopted June 6, 2016.

<sup>2</sup>Assembly floor amendments adopted June 27, 2016.

<sup>3</sup>Senate SJU committee amendments adopted June 26, 2017.

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

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

7 “Electronic” means relating to technology having electrical,  
8 digital, magnetic, wireless, optical, electromagnetic, or similar  
9 capabilities.

10 “Electronic communication” has the meaning set forth in 18  
11 U.S.C. s.2510(12).

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

15 “Fiduciary” means an original, additional, or successor personal  
16 representative, guardian, agent, or trustee.

17 “Guardian” means a person appointed by the court to make  
18 decisions regarding the property of an incapacitated adult, including  
19 a person appointed in accordance with N.J.S.3B:12-1 et seq. or its  
20 equivalent in a state other than New Jersey.

21 “Incapacitated person” means an incapacitated individual, as  
22 defined in N.J.S.3B:1-2, for whom a guardian has been appointed.

23 “Information” means data, text, images, videos, sounds, codes,  
24 computer programs, software, databases, or the like.

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

30 “Person” means an individual, estate, business or nonprofit  
31 entity, public corporation, government or governmental subdivision,  
32 agency, or instrumentality, or other legal entity.

33 “Personal representative” means an executor, administrator,  
34 special administrator, or person that performs substantially the same  
35 function under the law of this State other than this act.

36 “Power of attorney” means a written instrument by which an  
37 individual known as the principal authorizes another individual or  
38 individuals or a qualified bank within the meaning of section 28 of  
39 P.L.1948, c.67 (C.17:9A-28) known as the attorney-in-fact to  
40 perform specified acts on behalf of the principal as the principal's  
41 agent.

42 “Principal” means an individual, at least 18 years of age, who, in  
43 a power of attorney, authorizes an agent to act.

44 “Record” means information that is inscribed on a tangible  
45 medium or that is stored in an electronic or other medium and is  
46 retrievable in perceivable form.

47 “Remote-computing service” means a custodian that provides to  
48 a user computer processing services or the storage of digital assets

1 by means of an electronic communications system, as defined in 18  
2 U.S.C. s.2510(14).

3 “Terms-of-service agreement” means an agreement that controls  
4 the relationship between an account holder and a custodian.

5 “Trustee” means a fiduciary with legal title to property pursuant  
6 to an agreement or declaration that creates a beneficial interest in  
7 another. “Trustee” includes an original, additional, or successor  
8 trustee, whether or not appointed or confirmed by court.

9 “User” means a person that has an account with a custodian.

10 “Will” means the last will and testament of a testator or testatrix  
11 and includes any codicil and any testamentary instrument that  
12 merely appoints an executor, revokes or revises another will,  
13 nominates a guardian, or expressly excludes or limits the right of a  
14 person or class to succeed to property of the decedent passing by  
15 intestate succession.

16

17 3. User’s Residence in State; Inapplicability of Act to  
18 Employers’ Digital Assets.

19 a. This act applies to a custodian if the user resides in this State  
20 or resided in this State at the time of the user’s death.

21 b. This act does not apply to a digital asset of an employer used  
22 by an employee in the ordinary course of the employer’s business.

23

24 4. User Direction for Disclosure of Digital Assets.

25 a. A user may use an online tool to direct the custodian to  
26 disclose or not to disclose to a designated recipient some or all of  
27 the user’s digital assets, including the content of electronic  
28 communications. If the online tool allows the user to modify or  
29 delete a direction at all times, a direction regarding disclosure using  
30 an online tool overrides a contrary direction by the user in a will,  
31 trust, power of attorney, or other record.

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

38 c. A user’s direction under subsection a. or b. of this section  
39 overrides a contrary provision in a terms-of-service agreement that  
40 does not require the user to act affirmatively and distinctly from the  
41 user’s assent to the terms of service.

42

43 5. Terms-of-Service Agreement.

44 a. This act does not change or impair a right of a custodian or a  
45 user under a terms-of-service agreement to access and use digital  
46 assets of the user.

47 b. This act does not give a fiduciary or designated recipient any  
48 new or expanded rights other than those held by the user for whom,

1 or for whose estate, the fiduciary or designated recipient acts or  
2 represents.

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

7

8 6. Procedure for Disclosing Digital Assets.

9 a. When disclosing digital assets of a user under this act, the  
10 custodian <sup>1</sup>**【may at its sole discretion】** shall either<sup>1</sup>:

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

13 (2) grant a fiduciary or designated recipient partial access to the  
14 user's account sufficient to perform the tasks with which the fiduciary  
15 or designated recipient is charged; or

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

20 b. A custodian may assess a reasonable administrative charge for  
21 the cost of disclosing digital assets under this act.

22 c. A custodian need not disclose under this act a digital asset  
23 deleted by a user.

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

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

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

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

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

35

36 7. Disclosure of Content of Electronic Communications of  
37 Deceased User.

38 If a deceased user consented or a court directs disclosure of the  
39 contents of electronic communications of the user, the custodian  
40 shall disclose to the personal representative of the estate of the user  
41 the content of an electronic communication sent or received by the  
42 user if the representative gives the custodian:

43 a. a written request for disclosure in physical or electronic  
44 form;

45 b. a copy of the death certificate of the user;

46 c. a <sup>1</sup>**【copy of the letters testamentary or letters of**  
47 **administration】** certificate evidencing the appointment of the  
48 representative or a small-estate affidavit<sup>1</sup>;

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

5 e. if requested by the custodian, any of the following:

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

9 (2) evidence linking the account to the user; or

10 (3) a finding by the court of any of the following:

11 (a) the user had a specific account with the custodian,  
12 identifiable by the information specified in paragraph (1) of this  
13 subsection;

14 (b) disclosure of the content of electronic communications of  
15 the user would not violate 18 U.S.C. s.2701 et seq., Unlawful  
16 Access to Stored Communications; 47 U.S.C. s.222, Privacy of  
17 Customer Information; or other applicable law;

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

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

24 8. Disclosure of Other Digital Assets of Deceased User.

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

31 a. a written request for disclosure in physical or electronic  
32 form;

33 b. a copy of the death certificate of the user;

34 c. a <sup>1</sup>**【copy of the letters testamentary or letters of**  
35 **administration】** certificate evidencing the appointment of the  
36 representative or a small-estate affidavit<sup>1</sup>; and

37 d. if requested by the custodian, any of the following:

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

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

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

44 (4) a finding by the court of either of the following:

45 (a) the user had a specific account with the custodian,  
46 identifiable by the information specified in paragraph (1) of this  
47 subsection; or

1 (b) disclosure of the user's digital assets is reasonably necessary  
2 for administration of the estate.

3

4 9. Disclosure of Content of Electronic Communications of  
5 Principal.

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

11 a. a written request for disclosure in physical or electronic  
12 form;

13 b. an original or copy of the power of attorney expressly  
14 granting the agent authority over the content of electronic  
15 communications of the principal;

16 c. a certification by the agent, under penalty of perjury, that the  
17 power of attorney is in effect; and

18 d. if requested by the custodian:

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

22 (2) evidence linking the account to the principal.

23

24 10. Disclosure of Other Digital Assets of Principal.

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

32 a. a written request for disclosure in physical or electronic  
33 form;

34 b. an original or a copy of the power of attorney that gives the  
35 agent specific authority over digital assets or general authority to  
36 act on behalf of the principal;

37 c. a certification by the agent, under penalty of perjury, that the  
38 power of attorney is in effect; and

39 d. if requested by the custodian:

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

43 (2) evidence linking the account to the principal.

44

45 11. Disclosure of Digital Assets Held in Trust When Trustee is  
46 Original User.

47 Unless otherwise ordered by the court or provided in a trust, a  
48 custodian shall disclose to a trustee that is an original user of an  
49 account any digital asset of the account held in trust, including a

1 catalogue of electronic communications of the trustee and the  
2 content of electronic communications.

3

4 12. Disclosure of Contents of Electronic Communications Held  
5 in Trust When Trustee Not Original User.

6 Unless otherwise ordered by the court, directed by the user, or  
7 provided in a trust, a custodian shall disclose to a trustee that is not  
8 an original user of an account the content of an electronic  
9 communication sent or received by an original or successor user and  
10 carried, maintained, processed, received, or stored by the custodian  
11 in the account of the trust if the trustee gives the custodian:

12 a. a written request for disclosure in physical or electronic  
13 form;

14 b. a certified copy of the trust instrument or a certification of  
15 the trust under N.J.S.3B:31-81 that includes consent to disclosure of  
16 the content of electronic communications to the trustee;

17 c. a certification by the trustee, under penalty of perjury, that  
18 the trust exists and the trustee is a currently acting trustee of the  
19 trust; and

20 d. if requested by the custodian:

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

24 (2) evidence linking the account to the trust.

25

26 13. Disclosure of Other Digital Assets Held in Trust When  
27 Trustee Not Original User.

28 Unless otherwise ordered by the court, directed by the user, or  
29 provided in a trust, a custodian shall disclose, to a trustee that is not  
30 an original user of an account, a catalogue of electronic  
31 communications sent or received by an original or successor user  
32 and stored, carried, or maintained by the custodian in an account of  
33 the trust and any digital assets, other than the content of electronic  
34 communications, in which the trust has a right or interest if the  
35 trustee gives the custodian:

36 a. a written request for disclosure in physical or electronic  
37 form;

38 b. a certified copy of the trust instrument or a certification of  
39 the trust under N.J.S.3B:31-81;

40 c. a certification by the trustee, under penalty of perjury, that  
41 the trust exists and the trustee is a currently acting trustee of the  
42 trust; and

43 d. if requested by the custodian:

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

47 (2) evidence linking the account to the trust.

1 14. Disclosure of Digital Assets to Guardian of Incapacitated  
2 Person.

3 a. After an opportunity for a hearing under N.J.S.3B:12-1 et  
4 seq., the court may grant a guardian access to the digital assets of an  
5 incapacitated person.

6 b. Unless otherwise ordered by the court or directed by the  
7 user, a custodian shall disclose to a guardian the catalogue of  
8 electronic communications sent or received by the incapacitated  
9 person and any digital assets, other than the content of electronic  
10 communications, in which the incapacitated person has a right or  
11 interest if the guardian gives the custodian:

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

14 (2) a copy of the court order that gives the guardian authority  
15 over the digital assets of the incapacitated person; and

16 (3) if requested by the custodian:

17 (a) a number, username, address, or other unique subscriber or  
18 account identifier assigned by the custodian to identify the account  
19 of the incapacitated person; or

20 (b) evidence linking the account to the incapacitated person.

21 c. A guardian with general authority to manage the assets of an  
22 incapacitated person may request a custodian of the digital assets of  
23 the incapacitated person to suspend or terminate an account of the  
24 incapacitated person for good cause. A request made under this  
25 section shall be accompanied by a copy of the court order giving the  
26 guardian authority over the incapacitated person's property.  
27

28 15. Fiduciary <sup>3</sup>and Designated Recipient<sup>3</sup> Duty and Authority.

29 a. The legal duties imposed on a fiduciary charged with  
30 managing tangible property apply to the management of digital  
31 assets, including:

32 (1) the duty of care;

33 (2) the duty of loyalty; and

34 (3) the duty of confidentiality.

35 b. A fiduciary's <sup>3</sup>or designated recipient's<sup>3</sup> authority with  
36 respect to a digital asset of a user:

37 (1) except as otherwise provided in section 4 of this act, is  
38 subject to the applicable terms of service;

39 (2) is subject to other applicable law, including copyright law;

40 (3) <sup>3</sup>in the case of a fiduciary,<sup>3</sup> is limited by the scope of the  
41 fiduciary's duties; and

42 (4) may not be used to impersonate the user.

43 c. A fiduciary with authority over the property of a decedent,  
44 incapacitated person, principal, or settlor has the right to access any  
45 digital asset in which the decedent, incapacitated person, principal,  
46 or settlor had a right or interest and that is not held by a custodian  
47 or subject to a terms-of-service agreement.

1 d. A fiduciary acting within the scope of the fiduciary's duties  
2 is an authorized user of the property of the decedent, incapacitated  
3 person, principal, or settlor for the purpose of applicable computer-  
4 fraud and unauthorized-computer-access laws, including but not  
5 limited to the provisions of P.L.1984, c.184 (C.2C:20-23 et seq.)  
6 and N.J.S.2C:20-2.

7 e. A fiduciary with authority over the tangible, personal  
8 property of a decedent, incapacitated person, principal, or settlor:

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

11 (2) is an authorized user for the purpose of computer-fraud and  
12 unauthorized-computer-access laws, including but not limited to the  
13 provisions of P.L.1984, c.184 (C.2C:20-23 et seq.) and  
14 N.J.S.2C:20-2.

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

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

21 (1) if the user is deceased, a copy of the death certificate of the  
22 user;

23 (2) a copy of the letters testamentary or letters of administration,  
24 court order, power of attorney, or trust giving the fiduciary  
25 authority over the account; and

26 (3) if requested by the custodian:

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

30 (b) evidence linking the account to the user; or

31 (c) a finding by the court that the user had a specific account  
32 with the custodian, identifiable by the information specified in  
33 subparagraph (a) of this paragraph.

34  
35 16. Custodian Compliance and Immunity.

36 a. Not later than 60 days after receipt of the information  
37 required under sections 7 through 15 of this act, a custodian shall  
38 comply with a request under this act from a fiduciary or designated  
39 recipient to disclose digital assets or terminate an account. If the  
40 custodian fails to comply, the fiduciary or designated recipient may  
41 apply to the court for an order directing compliance.

42 b. An order under subsection a. of this section directing  
43 compliance must contain a finding that compliance is not in  
44 violation of 18 U.S.C. s.2702.

45 c. A custodian may notify the user that a request for disclosure  
46 or to terminate an account was made under this act.

47 d. A custodian may deny a request under this act from a  
48 fiduciary or designated recipient for disclosure of digital assets or to

1 terminate an account if the custodian is aware of any lawful access  
2 to the account following the receipt of the fiduciary's request.

3 e. This act does not limit a custodian's ability to obtain or  
4 require a fiduciary or designated recipient requesting disclosure or  
5 termination under this act to obtain a court order which:

6 (1) specifies that an account belongs to the incapacitated person  
7 or principal;

8 (2) specifies that there is sufficient consent from the  
9 incapacitated person or principal to support the requested  
10 disclosure; and

11 (3) contains a finding required by law other than this act.

12 f. A custodian and its officers, employees, and agents are  
13 immune from liability for an act or omission done in good faith in  
14 compliance with this act.

15

16 17. Uniformity of Application and Construction.

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

20

21 18. Relation to Electronic Signatures in Global and National  
22 Commerce Act.

23 This act modifies, limits, or supersedes the Electronic Signatures  
24 in Global and National Commerce Act, 15 U.S.C. s.7001 et seq., but  
25 does not modify, limit, or supersede section 101(c) of that act, 15  
26 U.S.C. s.7001(c), or authorize electronic delivery of any of the  
27 notices described in s.103(b) of that act, 15 U.S.C. s.7003(b).

28

29 19. Effective date and applicability.

30 This act shall take effect on the 90<sup>th</sup> day following enactment and  
31 shall apply to:

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

34 b. a personal representative acting for a decedent who died  
35 before, on, or after the effective date of this act;

36 c. a guardianship, whether the guardian was appointed before,  
37 on, or after the effective date of this act; and

38 d. a trustee acting under a trust created before, on, or after the  
39 effective date of this act.

40

41

42

43

44 "Uniform Fiduciary Access to Digital Assets Act"; authorizes  
45 executor, agent, guardian, or trustee, under certain circumstances, to  
46 manage electronic records of decedent, principal, incapacitated  
47 person, or trust creator.

# ASSEMBLY, No. 3433

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED MARCH 7, 2016

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**Assemblywoman PATRICIA EGAN JONES**

**District 5 (Camden and Gloucester)**

**SYNOPSIS**

“Uniform Fiduciary Access to Digital Assets Act”; authorizes executor, agent, guardian, or trustee, under certain circumstances, to manage electronic records of decedent, principal, incapacitated person, or trust creator.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/3/2016)**

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2 supplementing Title 3B of the New Jersey Statutes.

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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 “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 “Personal representative” means an executor, administrator,  
19 special administrator, or person that performs substantially the same  
20 function under the law of this State other than this act.

21 “Power of attorney” means a written instrument by which an  
22 individual known as the principal authorizes another individual or  
23 individuals or a qualified bank within the meaning of section 28 of  
24 P.L.1948, c.67 (C.17:9A-28) known as the attorney-in-fact to  
25 perform specified acts on behalf of the principal as the principal's  
26 agent.

27 “Principal” means an individual, at least 18 years of age, who, in  
28 a power of attorney, authorizes an agent to act.

29 “Record” means information that is inscribed on a tangible  
30 medium or that is stored in an electronic or other medium and is  
31 retrievable in perceivable form.

32 “Remote-computing service” means a custodian that provides to  
33 a user computer processing services or the storage of digital assets  
34 by means of an electronic communications system, as defined in 18  
35 U.S.C. s.2510(14).

36 “Terms-of-service agreement” means an agreement that controls  
37 the relationship between an account holder and a custodian.

38 “Trustee” means a fiduciary with legal title to property pursuant  
39 to an agreement or declaration that creates a beneficial interest in  
40 another. “Trustee” includes an original, additional, or successor  
41 trustee, whether or not appointed or confirmed by court.

42 “User” means a person that has an account with a custodian.

43 “Will” means the last will and testament of a testator or testatrix  
44 and includes any codicil and any testamentary instrument that  
45 merely appoints an executor, revokes or revises another will,  
46 nominates a guardian, or expressly excludes or limits the right of a  
47 person or class to succeed to property of the decedent passing by  
48 intestate succession.

1       3. User's Residence in State; Inapplicability of Act to  
2 Employers' Digital Assets.

3       a. This act applies to a custodian if the user resides in this State  
4 or resided in this State at the time of the user's death.

5       b. This act does not apply to a digital asset of an employer used  
6 by an employee in the ordinary course of the employer's business.

7

8       4. User Direction for Disclosure of Digital Assets.

9       a. A user may use an online tool to direct the custodian to  
10 disclose or not to disclose to a designated recipient some or all of  
11 the user's digital assets, including the content of electronic  
12 communications. If the online tool allows the user to modify or  
13 delete a direction at all times, a direction regarding disclosure using  
14 an online tool overrides a contrary direction by the user in a will,  
15 trust, power of attorney, or other record.

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

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

26

27       5. Terms-of-Service Agreement.

28       a. This act does not change or impair a right of a custodian or a  
29 user under a terms-of-service agreement to access and use digital  
30 assets of the user.

31       b. This act does not give a fiduciary or designated recipient any  
32 new or expanded rights other than those held by the user for whom,  
33 or for whose estate, the fiduciary or designated recipient acts or  
34 represents.

35       c. A fiduciary's or designated recipient's access to digital  
36 assets may be modified or eliminated by a user, by federal law, or  
37 by a terms-of-service agreement if the user has not provided  
38 direction under section 4 of this act.

39

40       6. Procedure for Disclosing Digital Assets.

41       a. When disclosing digital assets of a user under this act, the  
42 custodian may at its sole discretion:

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

45       (2) grant a fiduciary or designated recipient partial access to the  
46 user's account sufficient to perform the tasks with which the  
47 fiduciary or designated recipient is charged; or

48       (3) provide a fiduciary or designated recipient a copy in a record

1 of any digital asset that, on the date the custodian received the  
2 request for disclosure, the user could have accessed if the user were  
3 alive and had full capacity and access to the account.

4 b. A custodian may assess a reasonable administrative charge  
5 for the cost of disclosing digital assets under this act.

6 c. A custodian need not disclose under this act a digital asset  
7 deleted by a user.

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

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

21

22 7. Disclosure of Content of Electronic Communications of  
23 Deceased User.

24 If a deceased user consented or a court directs disclosure of the  
25 contents of electronic communications of the user, the custodian  
26 shall disclose to the personal representative of the estate of the user  
27 the content of an electronic communication sent or received by the  
28 user if the representative gives the custodian:

29 a. a written request for disclosure in physical or electronic  
30 form;

31 b. a copy of the death certificate of the user;

32 c. a copy of the letters testamentary or letters of administration;

33 d. unless the user provided direction using an online tool, a  
34 copy of the user's will, trust, power of attorney, or other record  
35 evidencing the user's consent to disclosure of the content of  
36 electronic communications; and

37 e. if requested by the custodian, any of the following:

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

41 (2) evidence linking the account to the user; or

42 (3) a finding by the court of any of the following:

43 (a) the user had a specific account with the custodian,  
44 identifiable by the information specified in paragraph (1) of this  
45 subsection;

46 (b) disclosure of the content of electronic communications of  
47 the user would not violate 18 U.S.C. s.2701 et seq., Unlawful  
48 Access to Stored Communications; 47 U.S.C. s.222, Privacy of

1 Customer Information; or other applicable law;

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

5 (d) disclosure of the content of electronic communications of  
6 the user is reasonably necessary for administration of the estate.  
7

8 8. Disclosure of Other Digital Assets of Deceased User.

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

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

17 b. a copy of the death certificate of the user;

18 c. a copy of the letters testamentary or letters of administration;  
19 and

20 d. if requested by the custodian, any of the following:

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

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

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

27 (4) a finding by the court of either of the following:

28 (a) the user had a specific account with the custodian,  
29 identifiable by the information specified in paragraph (1) of this  
30 subsection; or

31 (b) disclosure of the user's digital assets is reasonably necessary  
32 for administration of the estate.  
33

34 9. Disclosure of Content of Electronic Communications of  
35 Principal.

36 To the extent a power of attorney expressly grants an agent  
37 authority over the content of electronic communications sent or  
38 received by the principal and unless directed otherwise by the  
39 principal or the court, a custodian shall disclose to the agent the  
40 content if the agent gives the custodian:

41 a. a written request for disclosure in physical or electronic  
42 form;

43 b. an original or copy of the power of attorney expressly  
44 granting the agent authority over the content of electronic  
45 communications of the principal;

46 c. a certification by the agent, under penalty of perjury, that the  
47 power of attorney is in effect; and

48 d. if requested by the custodian:

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

4 (2) evidence linking the account to the principal.  
5

6 10. Disclosure of Other Digital Assets of Principal.

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

14 a. a written request for disclosure in physical or electronic  
15 form;

16 b. an original or a copy of the power of attorney that gives the  
17 agent specific authority over digital assets or general authority to  
18 act on behalf of the principal;

19 c. a certification by the agent, under penalty of perjury, that the  
20 power of attorney is in effect; and

21 d. if requested by the custodian:

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

25 (2) evidence linking the account to the principal.  
26

27 11. Disclosure of Digital Assets Held in Trust When Trustee is  
28 Original User.

29 Unless otherwise ordered by the court or provided in a trust, a  
30 custodian shall disclose to a trustee that is an original user of an  
31 account any digital asset of the account held in trust, including a  
32 catalogue of electronic communications of the trustee and the  
33 content of electronic communications.  
34

35 12. Disclosure of Contents of Electronic Communications Held  
36 in Trust When Trustee Not Original User.

37 Unless otherwise ordered by the court, directed by the user, or  
38 provided in a trust, a custodian shall disclose to a trustee that is not  
39 an original user of an account the content of an electronic  
40 communication sent or received by an original or successor user and  
41 carried, maintained, processed, received, or stored by the custodian  
42 in the account of the trust if the trustee gives the custodian:

43 a. a written request for disclosure in physical or electronic  
44 form;

45 b. a certified copy of the trust instrument or a certification of  
46 the trust under N.J.S.3B:31-81 that includes consent to disclosure of  
47 the content of electronic communications to the trustee;

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

4 d. if requested by the custodian:

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

8 (2) evidence linking the account to the trust.  
9

10 13. Disclosure of Other Digital Assets Held in Trust When  
11 Trustee Not Original User.

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

20 a. a written request for disclosure in physical or electronic  
21 form;

22 b. a certified copy of the trust instrument or a certification of  
23 the trust under N.J.S.3B:31-81;

24 c. a certification by the trustee, under penalty of perjury, that  
25 the trust exists and the trustee is a currently acting trustee of the  
26 trust; and

27 d. if requested by the custodian:

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

31 (2) evidence linking the account to the trust.  
32

33 14. Disclosure of Digital Assets to Guardian of Incapacitated  
34 Person.

35 a. After an opportunity for a hearing under N.J.S.3B:12-1 et  
36 seq., the court may grant a guardian access to the digital assets of an  
37 incapacitated person.

38 b. Unless otherwise ordered by the court or directed by the  
39 user, a custodian shall disclose to a guardian the catalogue of  
40 electronic communications sent or received by the incapacitated  
41 person and any digital assets, other than the content of electronic  
42 communications, in which the incapacitated person has a right or  
43 interest if the guardian gives the custodian:

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

46 (2) a copy of the court order that gives the guardian authority  
47 over the digital assets of the incapacitated person; and

48 (3) if requested by the custodian:

1 (a) a number, username, address, or other unique subscriber or  
2 account identifier assigned by the custodian to identify the account  
3 of the incapacitated person; or

4 (b) evidence linking the account to the incapacitated person.

5 c. A guardian with general authority to manage the assets of an  
6 incapacitated person may request a custodian of the digital assets of  
7 the incapacitated person to suspend or terminate an account of the  
8 incapacitated person for good cause. A request made under this  
9 section shall be accompanied by a copy of the court order giving the  
10 guardian authority over the incapacitated person's property.

11

12 15. Fiduciary Duty and Authority.

13 a. The legal duties imposed on a fiduciary charged with  
14 managing tangible property apply to the management of digital  
15 assets, including:

16 (1) the duty of care;

17 (2) the duty of loyalty; and

18 (3) the duty of confidentiality.

19 b. A fiduciary's authority with respect to a digital asset of a  
20 user:

21 (1) except as otherwise provided in section 4 of this act, is  
22 subject to the applicable terms of service;

23 (2) is subject to other applicable law, including copyright law;

24 (3) is limited by the scope of the fiduciary's duties; and

25 (4) may not be used to impersonate the user.

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

31 d. A fiduciary acting within the scope of the fiduciary's duties  
32 is an authorized user of the property of the decedent, incapacitated  
33 person, principal, or settlor for the purpose of applicable computer-  
34 fraud and unauthorized-computer-access laws, including but not  
35 limited to the provisions of P.L.1984, c.184 (C.2C:20-23 et seq.)  
36 and N.J.S.2C:20-2.

37 e. A fiduciary with authority over the tangible, personal  
38 property of a decedent, incapacitated person, principal, or settlor:

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

41 (2) is an authorized user for the purpose of computer-fraud and  
42 unauthorized-computer-access laws, including but not limited to the  
43 provisions of P.L.1984, c.184 (C.2C:20-23 et seq.) and  
44 N.J.S.2C:20-2.

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

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

4 (1) if the user is deceased, a copy of the death certificate of the  
5 user;

6 (2) a copy of the letters testamentary or letters of administration,  
7 court order, power of attorney, or trust giving the fiduciary  
8 authority over the account; and

9 (3) if requested by the custodian:

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

13 (b) evidence linking the account to the user; or

14 (c) a finding by the court that the user had a specific account  
15 with the custodian, identifiable by the information specified in  
16 subparagraph (a) of this paragraph.

17  
18 16. Custodian Compliance and Immunity.

19 a. Not later than 60 days after receipt of the information  
20 required under sections 7 through 15 of this act, a custodian shall  
21 comply with a request under this act from a fiduciary or designated  
22 recipient to disclose digital assets or terminate an account. If the  
23 custodian fails to comply, the fiduciary or designated recipient may  
24 apply to the court for an order directing compliance.

25 b. An order under subsection a. of this section directing  
26 compliance must contain a finding that compliance is not in  
27 violation of 18 U.S.C. s.2702.

28 c. A custodian may notify the user that a request for disclosure  
29 or to terminate an account was made under this act.

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

34 e. This act does not limit a custodian's ability to obtain or  
35 require a fiduciary or designated recipient requesting disclosure or  
36 termination under this act to obtain a court order which:

37 (1) specifies that an account belongs to the incapacitated person  
38 or principal;

39 (2) specifies that there is sufficient consent from the  
40 incapacitated person or principal to support the requested  
41 disclosure; and

42 (3) contains a finding required by law other than this act.

43 f. A custodian and its officers, employees, and agents are  
44 immune from liability for an act or omission done in good faith in  
45 compliance with this act.

46  
47 17. Uniformity of Application and Construction.

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

4  
5 18. Relation to Electronic Signatures in Global and National  
6 Commerce Act.

7 This act modifies, limits, or supersedes the Electronic Signatures  
8 in Global and National Commerce Act, 15 U.S.C. s.7001 et seq., but  
9 does not modify, limit, or supersede section 101(c) of that act, 15  
10 U.S.C. s.7001(c), or authorize electronic delivery of any of the  
11 notices described in s.103(b) of that act, 15 U.S.C. s.7003(b).

12  
13 19. Effective date and applicability.

14 This act shall take effect on the 90<sup>th</sup> day following enactment and  
15 shall apply to:

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

18 b. a personal representative acting for a decedent who died  
19 before, on, or after the effective date of this act;

20 c. a guardianship, whether the guardian was appointed before,  
21 on, or after the effective date of this act; and

22 d. a trustee acting under a trust created before, on, or after the  
23 effective date of this act.

24  
25  
26 STATEMENT

27  
28 This bill would enact the “Uniform Fiduciary Access to Digital  
29 Assets Act” (UFADAA). The act was promulgated by the Uniform  
30 Law Commission in 2014 and revised by the commission in 2015.

31 SUMMARY

32 Under the UFADAA, the traditional power of a fiduciary to  
33 manage a person’s tangible property when that person dies or loses  
34 the ability to manage his own property would be extended to allow  
35 the fiduciary to manage digital assets. The act defines the term  
36 “digital assets” to mean a person’s digital property and electronic  
37 communications. The term does not include an underlying asset or  
38 liability unless the asset or liability is itself an electronic record.

39 The UFADAA allows fiduciaries to manage digital property,  
40 such as computer files, web domains, and virtual currency, but  
41 restricts a fiduciary’s access to electronic communications such as  
42 email, text messages, and social media accounts unless the original  
43 user consented in a will, trust, power of attorney, or other record.

44 The act encompasses four types of fiduciaries: (1) executors or  
45 administrators of deceased persons’ estates; (2) court-appointed  
46 guardians of incapacitated persons; (3) agents appointed under  
47 powers of attorney; and (4) trustees.

48 The act would not apply to digital assets of an employer used by

1 an employee during the ordinary course of business.

2 The act distinguishes between a “catalogue of electronic  
3 communications” (information that identifies each person with  
4 which a user has had an electronic communication, and the time and  
5 date of that communication) and the “content of an electronic  
6 communication” (information concerning the substance or meaning  
7 of the communication). The act provides that generally a fiduciary  
8 would have access to a catalogue of the user’s communications, but  
9 not the content, unless the user consented to the disclosure of the  
10 content.

11 Under the act, a “custodian” is a person or entity that carries,  
12 maintains, processes, receives, or stores digital assets. The act  
13 provides that if a custodian provides an “online tool,” separate from  
14 the general terms of service, that allows the user to name another  
15 person to have access to the user’s digital assets or to direct the  
16 custodian to delete the user’s digital assets, the user’s online  
17 instructions would be enforceable.

18 If the custodian does not provide an online tool or if the user  
19 declines to use the online tool provided, the user may give  
20 directions for the disposition of digital assets in a will, trust, power  
21 of attorney, or other written record.

22 If the user has not provided any direction, either online or in an  
23 estate plan, the terms of service for the user’s account would  
24 determine whether a fiduciary may access the user’s digital assets.  
25 If the terms of service do not address fiduciary access, the default  
26 rules of the UFADAA would apply.

27 Under the UFADAA, fiduciaries for digital assets would be  
28 subject to the same fiduciary duties that normally apply to tangible  
29 assets. Thus, for example, an executor would not be authorized to  
30 publish the decedent’s confidential communications or impersonate  
31 the decedent by sending email from the decedent’s account. A  
32 fiduciary’s management of digital assets may also be limited by  
33 other law. For example, a fiduciary may not copy or distribute  
34 digital files in violation of copyright law, and may not exceed the  
35 user’s authority under the account’s terms of service.

36 In order to gain access to digital assets, a fiduciary would be  
37 required to send a request to the custodian, accompanied by a copy  
38 of the document granting fiduciary authority, such as a letter of  
39 appointment, court order, or certification of trust.

40 Under the bill, custodians of digital assets would be immune  
41 from any liability for an act or omission done in good faith in  
42 compliance with the act.

#### 43 SPECIFIC SECTIONS

44 SECTION 1: Designates the bill as the “Uniform Fiduciary Access  
45 to Digital Assets Act.”

46 SECTION 2: Sets out definitions of terms.

47 SECTION 3: Provides that the act applies to a custodian if the user  
48 resides in this State or resided in this State at the time of the user’s

1 death, and provides that the act does not apply to a digital asset of  
2 an employer used by an employee in the ordinary course of the  
3 employer's business.

4 SECTION 4: Sets out procedures concerning the use of an online  
5 tool to designate disclosure or non-disclosure of the user's digital  
6 assets.

7 SECTION 5: Establishes that the terms-of-service agreement  
8 governing an online account applies to fiduciaries as well as users,  
9 and clarifies that a fiduciary or designated recipient would not have  
10 any new or expanded rights other than those held by the user.

11 SECTION 6: Gives the custodians of digital assets some discretion  
12 in determining disclosure of digital assets to fiduciaries. This  
13 section provides that a custodian may, for example, comply with a  
14 request for access by allowing the fiduciary to reset the password  
15 and access the user's account. Under the act, a custodian may also  
16 comply without giving access to a user's account by simply giving a  
17 copy of all the user's digital assets to the fiduciary. This section  
18 also allows the custodian to assess a reasonable administrative  
19 charge for the cost of disclosing digital assets.

20 SECTIONS 7-14: Establishes the rights of personal representatives  
21 of an estate, guardians, agents acting pursuant to a power of  
22 attorney, and trustees. Each of the fiduciaries is subject to different  
23 rules for the content of communications protected under federal  
24 privacy laws and for other types of digital assets.

25 SECTION 15: Provides that the legal duties imposed on a fiduciary  
26 charged with managing tangible property apply to the management  
27 of digital assets, including the duty of care, the duty of loyalty, and  
28 the duty of confidentiality. Section 15 also provides that, except as  
29 otherwise provided in section 4 of the act concerning online tools,  
30 a fiduciary's authority with respect to a digital asset is subject to the  
31 applicable terms of service, is subject to other applicable law,  
32 including copyright law, and may not be used to impersonate the  
33 user. This section also authorizes a fiduciary to request a custodian  
34 to terminate the use's account and sets out the documentation that  
35 must accompany such a request, such as a copy of the death  
36 certificate, court order, power of attorney, or trust.

37 SECTION 16: Requires the custodian to comply with a request  
38 from a fiduciary within 60 days after receipt. If the custodian fails  
39 to comply, the fiduciary or designated recipient may apply to the  
40 court for an order directing compliance. (A "designated recipient" is  
41 a person chosen by the user, using an online tool, to administer the  
42 user's digital assets.) Section 16 also allows a custodian to deny a  
43 request from a fiduciary or designated recipient for disclosure of  
44 digital assets or to terminate an account if the custodian is aware of  
45 any lawful access to the account following the receipt of the  
46 fiduciary's request. This provision is intended to protect joint  
47 owners of the account.

48 SECTION 17: Provides that in applying and construing this

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1 uniform act, consideration must be given to the need to promote  
2 uniformity of the law with respect to its subject matter among states  
3 that enact it.

4 SECTION 18: Provides that the act modifies, limits, or supersedes  
5 the federal Electronic Signatures in Global and National Commerce  
6 Act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or  
7 supersede Section 101(c) of that act, 15 U.S.C. section 7001(c), or  
8 authorize electronic delivery of any of the notices described in  
9 section 103(b) of that act, 15 U.S.C. section 7003(b).

10 SECTION 19: provides that the act will take effect on the 90th day  
11 following enactment and would apply retroactively: the act would  
12 encompass a fiduciary acting under a will or power of attorney  
13 executed before, on, or after the effective date of the act; a personal  
14 representative acting for a decedent who died before, on, or after  
15 the effective date; a guardianship, whether the guardian was  
16 appointed before, on, or after the effective date; and a trustee acting  
17 under a trust created before, on, or after the effective date.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3433**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 6, 2016

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 3433.

This bill would enact the “Uniform Fiduciary Access to Digital Assets Act” (UFADAA). The act was promulgated by the Uniform Law Commission in 2014 and revised by the commission in 2015.

The committee amended the bill to make several clarifications.

#### OVERVIEW OF THE BILL:

Under the UFADAA, the traditional power of a fiduciary to manage a person’s tangible property when that person dies or loses the ability to manage his own property would be extended to allow the fiduciary to manage digital assets. The act defines the term “digital assets” to mean a person’s digital property and electronic communications. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

The UFADAA allows fiduciaries to manage digital property, such as 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.

The act encompasses four types of fiduciaries: (1) executors or administrators of deceased persons’ estates; (2) court-appointed guardians of incapacitated persons; (3) agents appointed under powers of attorney; and (4) trustees.

The act would not apply to digital assets of an employer used by an employee during the ordinary course of business.

The act distinguishes between a “catalogue of electronic communications” (information that identifies each person with which a user has had an electronic communication, and the time and date of that communication) and the “content of an electronic communication” (information concerning the substance or meaning of the communication). The act provides that generally a fiduciary would have access to a catalogue of the user’s communications, but not the content, unless the user consented to the disclosure of the content.

Under the act, a “custodian” is a person or entity that carries, maintains, processes, receives, or stores digital assets. The act

provides that if a 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, the user’s online instructions would be enforceable.

If the custodian does not provide an online tool or if the user declines to use the online tool provided, the user may give directions for the disposition of digital assets in a will, trust, power of attorney, or other written record.

If the user has not provided any direction, either online or in an estate plan, the terms of service for the user’s account would 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 the UFADAA would apply.

Under the UFADAA, fiduciaries for digital assets would be subject to the same fiduciary duties that normally apply to tangible assets. Thus, for example, an executor would not be authorized to 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, a fiduciary would be required to send a request to the custodian, accompanied by a copy of the document granting fiduciary authority, such as a letter of appointment, court order, or certification of trust.

Under the bill, custodians of digital assets would be immune from any liability for an act or omission done in good faith in compliance with the act.

#### SPECIFIC SECTIONS OF THE BILL:

Section 1: Designates the bill as the “Uniform Fiduciary Access to Digital Assets Act.”

Section 2: Sets out definitions of terms.

Section 3: Provides that the act applies to a custodian if the user resides in this State or resided in this State at the time of the user’s death, and provides that the act does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer’s business.

Section 4: Sets out procedures concerning the use of an online tool to designate disclosure or non-disclosure of the user’s digital assets.

Section 5: Establishes that the terms-of-service agreement governing an online account applies to fiduciaries as well as users, and clarifies that a fiduciary or designated recipient would not have any new or expanded rights other than those held by the user.

Section 6: Gives the custodians of digital assets some discretion in determining disclosure of digital assets to fiduciaries. This section

provides that a custodian may, for example, comply with a request for access by allowing the fiduciary to reset the password and access the user's account. Under the act, a custodian may also comply without giving access to a user's account by simply giving a copy of all the user's digital assets to the fiduciary. This section also allows the custodian to assess a reasonable administrative charge for the cost of disclosing digital assets.

As introduced, section 6 had provided that the custodian "may at its sole discretion": (1) grant a fiduciary or designated recipient full access to the account; (2) grant a fiduciary or designated recipient partial access; or (3) provide a fiduciary or designated recipient a copy in a record of any digital asset that the user could have accessed on the date the custodian received the request if the user were alive and had full capacity. The committee amendments change the "sole discretion" language to provide that the custodian "shall either" do any of the listed acts. The intent of this change is to clarify that the custodian would have discretion as to which method of disclosure to use, but would not have discretion to refuse disclosure.

Sections 7-14: Establishes the rights of personal representatives of an estate, guardians, agents acting pursuant to a power of attorney, and trustees. Each of the fiduciaries is subject to different rules for the content of communications protected under federal privacy laws and for other types of digital assets.

The committee amendments clarify sections 7 and 8 concerning the documentation requirement in the bill. As introduced, the bill had required a copy of the letters testamentary or letter of administration. The amendments replace this requirement with a requirement for a less burdensome alternative: a certificate evidencing the appointment of the representative or a small-estate certificate.

Section 15: Provides that the legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including the duty of care, the duty of loyalty, and the duty of confidentiality. Section 15 also provides that, except as otherwise provided in section 4 of the act concerning online tools, a fiduciary's authority with respect to a digital asset is subject to the applicable terms of service, is subject to other applicable law, including copyright law, and may not be used to impersonate the user. This section also authorizes a fiduciary to request a custodian to terminate the user's account and sets out the documentation that must accompany such a request, such as a copy of the death certificate, court order, power of attorney, or trust.

Section 16: Requires the custodian to comply with a request from a fiduciary within 60 days after receipt. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance. (A "designated recipient" is a person chosen by the user, using an online tool, to administer the user's digital assets.) Section 16 also allows a custodian to deny a request from a

fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request. This provision is intended to protect joint owners of the account.

Section 17: Provides that in applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 18: Provides that the act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

Section 19: Provides that the act will take effect on the 90th day following enactment and would apply retroactively: the act would encompass a fiduciary acting under a will or power of attorney executed before, on, or after the effective date of the act; a personal representative acting for a decedent who died before, on, or after the effective date; a guardianship, whether the guardian was appointed before, on, or after the effective date; and a trustee acting under a trust created before, on, or after the effective date.

#### COMMITTEE AMENDMENTS:

1. Amend section 6 of the bill to remove language concerning the custodian's "sole discretion" and replace it with a requirement that the custodian "shall" do either of the listed acts.

2. Amend sections 7 and 8, which had required a copy of the letters testamentary or letter of administration, to instead require a certificate evidencing the appointment of the representative or a small-estate certificate.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

[Second Reprint]

## ASSEMBLY, No. 3433

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 26, 2017

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 3433 (2R).

This bill, as amended, would enact the “Uniform Fiduciary Access to Digital Assets Act” (UFADAA). The model act was promulgated by the Uniform Law Commission in 2014 and revised by the commission in 2015.

Under the bill, the traditional power of a fiduciary to manage a person’s tangible property when that person dies or loses the ability to manage his own property would be extended to allow the fiduciary to manage digital assets. The bill defines the term “digital assets” to mean a person’s digital property and electronic communications. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

The bill allows fiduciaries to manage digital property, such as 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 (i.e., accountholder) consented in a will, trust, power of attorney, or other record.

The bill encompasses four types of fiduciaries: (1) executors or administrators of deceased persons’ estates; (2) court-appointed guardians of incapacitated persons; (3) agents appointed under powers of attorney; and (4) trustees.

The bill would not apply to digital assets of an employer used by an employee during the ordinary course of business.

The bill distinguishes between a “catalogue of electronic communications” (information that identifies each person with which a user has had an electronic communication, and the time and date of that communication) and the “content of an electronic communication” (information concerning the substance or meaning of the communication). The bill provides that generally a fiduciary would have access to a catalogue of the user’s communications, but not the content, unless the user consented to the disclosure of the content.

Under the bill, a “custodian” is a person or entity that carries, maintains, processes, receives, or stores digital assets. The bill provides that if a 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, the user’s online instructions would be enforceable.

If the custodian does not provide an online tool or if the user declines to use the online tool provided, the user may give directions for the disposition of digital assets in a will, trust, power of attorney, or other written record.

If the user has not provided any direction, either online or in an estate plan, the terms of service for the user’s account would determine whether a fiduciary may access the user’s digital assets. If the terms of service do not address fiduciary access, the default rules presented in the bill would apply.

Under the bill, fiduciaries for digital assets would be subject to the same fiduciary duties that normally apply to tangible assets. Thus, for example, an executor would not be authorized to 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, a fiduciary would be required to send a request to the custodian, accompanied by a copy of the document granting fiduciary authority, such as a letter of appointment, court order, or certification of trust.

Under the bill, custodians of digital assets would be immune from any liability for an act or omission done in good faith in compliance with the bill.

#### SPECIFIC SECTIONS OF THE BILL:

Section 1: Designates the bill as the “Uniform Fiduciary Access to Digital Assets Act.”

Section 2: Sets out definitions of terms. Among other definitions, this section of the bill defines the term “court” to mean the Probate Part of the Chancery Division of the Superior Court, and includes the Surrogate’s Court acting within the scope of its authority.

Section 3: Provides that the bill applies to a custodian if the user resides in this State or resided in this State at the time of the user’s death, and provides that the bill does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer’s business.

Section 4: Sets out procedures concerning the use of an online tool to designate disclosure or non-disclosure of the user’s digital assets.

Section 5: Establishes that the terms-of-service agreement

governing an online account applies to fiduciaries as well as users, and clarifies that a fiduciary or designated recipient would not have any new or expanded rights other than those held by the user. A “designated recipient” is a person chosen by the user, using an online tool made available by the custodian of an online account, to administer the user’s digital assets for that particular account.

Section 6: Gives the custodians of digital assets some discretion in determining disclosure of digital assets to fiduciaries and designated recipients. This section provides that a custodian may, for example, comply with a request for access to reset the password and access the user’s account. Under the bill, a custodian may also comply without giving access to a user’s account by simply giving a copy of all the user’s digital assets to the fiduciary or designated recipient. This section also allows the custodian to assess a reasonable administrative charge for the cost of disclosing digital assets.

With respect to disclosure, the custodian shall either: (1) grant a fiduciary or designated recipient full access to the account; (2) grant a fiduciary or designated recipient partial access; or (3) provide a fiduciary or designated recipient a copy in a record of any digital asset that the user could have accessed on the date the custodian received the request if the user were alive and had full capacity. Thus, the custodian would have discretion as to which method of disclosure to use, but would not have discretion to refuse disclosure.

Sections 7-14: Establishes the rights of personal representatives of an estate, guardians, agents acting pursuant to a power of attorney, and trustees. Each of the fiduciaries is subject to different rules for the content of communications protected under federal privacy laws and for other types of digital assets.

Section 15: Provides that the legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including the duty of care, the duty of loyalty, and the duty of confidentiality. The section also provides that, except as otherwise provided in section 4 of the bill concerning online tools, a fiduciary’s or designated recipient’s authority with respect to a digital asset: would be subject to the applicable terms of service; would be subject to other applicable law, including copyright law; in the case of a fiduciary, would be limited by the scope of the fiduciary’s duties; and may not be used to impersonate the user. This section also authorizes a fiduciary to make a request to a custodian to terminate the user’s account and sets out the documentation that must accompany such request, such as a copy of the death certificate, court order, power of attorney, or trust.

Section 16: Requires the custodian to comply with a request from a fiduciary or designated recipient, within 60 days after receipt, concerning the disclosure of digital assets or termination of a user’s account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

This section also allows a custodian to deny a request from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any further lawful access to the account following the receipt of the termination request; this is intended to protect joint owners of the account.

Section 17: Provides that in applying and construing the bill, intended as a multistate uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 18: Provides that the bill modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

Section 19: Provides that the bill would take effect on the 90th day following enactment and would apply retroactively. It would encompass a fiduciary acting under a will or power of attorney executed before, on, or after the effective date of the bill; a personal representative acting for a decedent who died before, on, or after the effective date; a guardianship, whether the guardian was appointed before, on, or after the effective date; and a trustee acting under a trust created before, on, or after the effective date.

As amended and reported by the committee, this bill is identical to Senate Bill No. 2527, also amended and reported today by the committee.

#### COMMITTEE AMENDMENTS

- add a reference to “designated representative” in section 15 of the bill, so that a fiduciary’s *or designated recipient’s* authority with respect to a digital asset: would be subject to the applicable terms of service; would be subject to other applicable law, including copyright law; in the case of a fiduciary, would be limited by the scope of the fiduciary’s duties; and may not be used to impersonate the user.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 3433**

with Assembly Floor Amendments  
(Proposed by Assemblyman GREENWALD)

ADOPTED: JUNE 27, 2016

These floor amendments expand the bill's definition of the term "court." Currently, the bill provides that "court" means the Probate Part of the Chancery Division of the Superior Court. These floor amendments provide that for the purposes of the bill, the term "court" includes the Surrogate's Court acting within the scope of its authority pursuant to statute or the Rules of Court. The intent of the floor amendments is to allow certain matters to be conducted in the Surrogate's Court, thus allowing the parties to save the time and expense of proceeding in the Superior Court.

**SENATE, No. 2527**

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**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

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INTRODUCED SEPTEMBER 12, 2016

**Sponsored by:**

**Senator PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**SYNOPSIS**

“Uniform Fiduciary Access to Digital Assets Act”; authorizes executor, agent, guardian, or trustee, under certain circumstances, to manage electronic records of decedent, principal, incapacitated person, or trust creator.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning access by fiduciaries to digital assets and  
2 supplementing Title 3B of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Short Title. This act shall be known and may be cited as the  
8 “Uniform Fiduciary Access to Digital Assets Act.”

9

10 2. Definitions. As used in this act:

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

14 “Agent” means an attorney-in-fact granted authority under a  
15 durable or nondurable power of attorney.

16 “Carries” means engages in the transmission of an electronic  
17 communication.

18 “Catalogue of electronic communications” means information  
19 that identifies each person with which a user has had an electronic  
20 communication, the time and date of the communication, and the  
21 electronic address of the person.

22 “Content of an electronic communication” means information  
23 concerning the substance or meaning of the communication which:

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

25 (b) is in electronic storage by a custodian providing an  
26 electronic communication service to the public or is carried or  
27 maintained by a custodian providing a remote computing service to  
28 the public; and

29 (c) is not readily accessible to the public.

30 “Court” means the Probate Part of the Chancery Division of the  
31 Superior Court. For the purposes of this act, “court” includes the  
32 Surrogate’s Court acting within the scope of its authority pursuant  
33 to statute or the Rules of Court.

34 “Custodian” means a person that carries, maintains, processes,  
35 receives, or stores a digital asset of a user.

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

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

42 “Electronic” means relating to technology having electrical,  
43 digital, magnetic, wireless, optical, electromagnetic, or similar  
44 capabilities.

45 “Electronic communication” has the meaning set forth in 18  
46 U.S.C. s.2510(12).

1       “Electronic-communication service” means a custodian that  
2 provides to a user the ability to send or receive an electronic  
3 communication.

4       “Fiduciary” means an original, additional, or successor personal  
5 representative, guardian, agent, or trustee.

6       “Guardian” means a person appointed by the court to make  
7 decisions regarding the property of an incapacitated adult, including  
8 a person appointed in accordance with N.J.S.3B:12-1 et seq. or its  
9 equivalent in a state other than New Jersey.

10       “Incapacitated person” means an incapacitated individual, as  
11 defined in N.J.S.3B:1-2, for whom a guardian has been appointed.

12       “Information” means data, text, images, videos, sounds, codes,  
13 computer programs, software, databases, or the like.

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

19       “Person” means an individual, estate, business or nonprofit  
20 entity, public corporation, government or governmental subdivision,  
21 agency, or instrumentality, or other legal entity.

22       “Personal representative” means an executor, administrator,  
23 special administrator, or person that performs substantially the same  
24 function under the law of this State other than this act.

25       “Power of attorney” means a written instrument by which an  
26 individual known as the principal authorizes another individual or  
27 individuals or a qualified bank within the meaning of section 28 of  
28 P.L.1948, c.67 (C.17:9A-28) known as the attorney-in-fact to  
29 perform specified acts on behalf of the principal as the principal's  
30 agent.

31       “Principal” means an individual, at least 18 years of age, who, in  
32 a power of attorney, authorizes an agent to act.

33       “Record” means information that is inscribed on a tangible  
34 medium or that is stored in an electronic or other medium and is  
35 retrievable in perceivable form.

36       “Remote-computing service” means a custodian that provides to  
37 a user computer processing services or the storage of digital assets  
38 by means of an electronic communications system, as defined in 18  
39 U.S.C. s.2510(14).

40       “Terms-of-service agreement” means an agreement that controls  
41 the relationship between an account holder and a custodian.

42       “Trustee” means a fiduciary with legal title to property pursuant  
43 to an agreement or declaration that creates a beneficial interest in  
44 another. “Trustee” includes an original, additional, or successor  
45 trustee, whether or not appointed or confirmed by court.

46       “User” means a person that has an account with a custodian.

47       “Will” means the last will and testament of a testator or testatrix  
48 and includes any codicil and any testamentary instrument that

1 merely appoints an executor, revokes or revises another will,  
2 nominates a guardian, or expressly excludes or limits the right of a  
3 person or class to succeed to property of the decedent passing by  
4 intestate succession.

5

6 3. User's Residence in State; Inapplicability of Act to  
7 Employers' Digital Assets.

8 a. This act applies to a custodian if the user resides in this State  
9 or resided in this State at the time of the user's death.

10 b. This act does not apply to a digital asset of an employer used  
11 by an employee in the ordinary course of the employer's business.

12

13 4. User Direction for Disclosure of Digital Assets.

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

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

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

31

32 5. Terms-of-Service Agreement.

33 a. This act does not change or impair a right of a custodian or a  
34 user under a terms-of-service agreement to access and use digital  
35 assets of the user.

36 b. This act does not give a fiduciary or designated recipient any  
37 new or expanded rights other than those held by the user for whom,  
38 or for whose estate, the fiduciary or designated recipient acts or  
39 represents.

40 c. A fiduciary's or designated recipient's access to digital  
41 assets may be modified or eliminated by a user, by federal law, or  
42 by a terms-of-service agreement if the user has not provided  
43 direction under section 4 of this act.

44

45 6. Procedure for Disclosing Digital Assets.

46 a. When disclosing digital assets of a user under this act, the  
47 custodian shall either:

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

3 (2) grant a fiduciary or designated recipient partial access to the  
4 user's account sufficient to perform the tasks with which the fiduciary  
5 or designated recipient is charged; or

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

10 b. A custodian may assess a reasonable administrative charge for  
11 the cost of disclosing digital assets under this act.

12 c. A custodian need not disclose under this act a digital asset  
13 deleted by a user.

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

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

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

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

24 (4) all of the user's digital assets to the court for review in  
25 camera.

26

27 7. Disclosure of Content of Electronic Communications of  
28 Deceased User.

29 If a deceased user consented or a court directs disclosure of the  
30 contents of electronic communications of the user, the custodian  
31 shall disclose to the personal representative of the estate of the user  
32 the content of an electronic communication sent or received by the  
33 user if the representative gives the custodian:

34 a. a written request for disclosure in physical or electronic  
35 form;

36 b. a copy of the death certificate of the user;

37 c. a certificate evidencing the appointment of the representative  
38 or a small-estate affidavit;

39 d. unless the user provided direction using an online tool, a  
40 copy of the user's will, trust, power of attorney, or other record  
41 evidencing the user's consent to disclosure of the content of  
42 electronic communications; and

43 e. if requested by the custodian, any of the following:

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

47 (2) evidence linking the account to the user; or

48 (3) a finding by the court of any of the following:

1 (a) the user had a specific account with the custodian,  
2 identifiable by the information specified in paragraph (1) of this  
3 subsection;

4 (b) disclosure of the content of electronic communications of  
5 the user would not violate 18 U.S.C. s.2701 et seq., Unlawful  
6 Access to Stored Communications; 47 U.S.C. s.222, Privacy of  
7 Customer Information; or other applicable law;

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

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

13

14 8. Disclosure of Other Digital Assets of Deceased User.

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

21 a. a written request for disclosure in physical or electronic  
22 form;

23 b. a copy of the death certificate of the user;

24 c. a certificate evidencing the appointment of the representative  
25 or a small-estate affidavit; and

26 d. if requested by the custodian, any of the following:

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

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

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

33 (4) a finding by the court of either of the following:

34 (a) the user had a specific account with the custodian,  
35 identifiable by the information specified in paragraph (1) of this  
36 subsection; or

37 (b) disclosure of the user's digital assets is reasonably necessary  
38 for administration of the estate.

39

40 9. Disclosure of Content of Electronic Communications of  
41 Principal.

42 To the extent a power of attorney expressly grants an agent  
43 authority over the content of electronic communications sent or  
44 received by the principal and unless directed otherwise by the  
45 principal or the court, a custodian shall disclose to the agent the  
46 content if the agent gives the custodian:

47 a. a written request for disclosure in physical or electronic  
48 form;

- 1       b. an original or copy of the power of attorney expressly  
2 granting the agent authority over the content of electronic  
3 communications of the principal;
- 4       c. a certification by the agent, under penalty of perjury, that the  
5 power of attorney is in effect; and
- 6       d. if requested by the custodian:
- 7       (1) a number, username, address, or other unique subscriber or  
8 account identifier assigned by the custodian to identify the  
9 principal's account; or
- 10       (2) evidence linking the account to the principal.

11

12       10. Disclosure of Other Digital Assets of Principal.

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

- 20       a. a written request for disclosure in physical or electronic  
21 form;
- 22       b. an original or a copy of the power of attorney that gives the  
23 agent specific authority over digital assets or general authority to  
24 act on behalf of the principal;
- 25       c. a certification by the agent, under penalty of perjury, that the  
26 power of attorney is in effect; and
- 27       d. if requested by the custodian:
- 28       (1) a number, username, address, or other unique subscriber or  
29 account identifier assigned by the custodian to identify the  
30 principal's account; or
- 31       (2) evidence linking the account to the principal.

32

33       11. Disclosure of Digital Assets Held in Trust When Trustee is  
34 Original User.

35       Unless otherwise ordered by the court or provided in a trust, a  
36 custodian shall disclose to a trustee that is an original user of an  
37 account any digital asset of the account held in trust, including a  
38 catalogue of electronic communications of the trustee and the  
39 content of electronic communications.

40

41       12. Disclosure of Contents of Electronic Communications Held  
42 in Trust When Trustee Not Original User.

43       Unless otherwise ordered by the court, directed by the user, or  
44 provided in a trust, a custodian shall disclose to a trustee that is not  
45 an original user of an account the content of an electronic  
46 communication sent or received by an original or successor user and  
47 carried, maintained, processed, received, or stored by the custodian  
48 in the account of the trust if the trustee gives the custodian:

- 1 a. a written request for disclosure in physical or electronic
- 2 form;
- 3 b. a certified copy of the trust instrument or a certification of
- 4 the trust under N.J.S.3B:31-81 that includes consent to disclosure of
- 5 the content of electronic communications to the trustee;
- 6 c. a certification by the trustee, under penalty of perjury, that
- 7 the trust exists and the trustee is a currently acting trustee of the
- 8 trust; and
- 9 d. if requested by the custodian:
- 10 (1) a number, username, address, or other unique subscriber or
- 11 account identifier assigned by the custodian to identify the trust's
- 12 account; or
- 13 (2) evidence linking the account to the trust.

14

15 13. Disclosure of Other Digital Assets Held in Trust When

16 Trustee Not Original User.

17 Unless otherwise ordered by the court, directed by the user, or

18 provided in a trust, a custodian shall disclose, to a trustee that is not

19 an original user of an account, a catalogue of electronic

20 communications sent or received by an original or successor user

21 and stored, carried, or maintained by the custodian in an account of

22 the trust and any digital assets, other than the content of electronic

23 communications, in which the trust has a right or interest if the

24 trustee gives the custodian:

- 25 a. a written request for disclosure in physical or electronic
- 26 form;
- 27 b. a certified copy of the trust instrument or a certification of
- 28 the trust under N.J.S.3B:31-81;
- 29 c. a certification by the trustee, under penalty of perjury, that
- 30 the trust exists and the trustee is a currently acting trustee of the
- 31 trust; and
- 32 d. if requested by the custodian:
- 33 (1) a number, username, address, or other unique subscriber or
- 34 account identifier assigned by the custodian to identify the trust's
- 35 account; or
- 36 (2) evidence linking the account to the trust.

37

38 14. Disclosure of Digital Assets to Guardian of Incapacitated

39 Person.

- 40 a. After an opportunity for a hearing under N.J.S.3B:12-1 et
- 41 seq., the court may grant a guardian access to the digital assets of an
- 42 incapacitated person.
- 43 b. Unless otherwise ordered by the court or directed by the
- 44 user, a custodian shall disclose to a guardian the catalogue of
- 45 electronic communications sent or received by the incapacitated
- 46 person and any digital assets, other than the content of electronic
- 47 communications, in which the incapacitated person has a right or
- 48 interest if the guardian gives the custodian:

- 1 (1) a written request for disclosure in physical or electronic  
2 form;
- 3 (2) a copy of the court order that gives the guardian authority  
4 over the digital assets of the incapacitated person; and
- 5 (3) if requested by the custodian:
- 6 (a) a number, username, address, or other unique subscriber or  
7 account identifier assigned by the custodian to identify the account  
8 of the incapacitated person; or
- 9 (b) evidence linking the account to the incapacitated person.
- 10 c. A guardian with general authority to manage the assets of an  
11 incapacitated person may request a custodian of the digital assets of  
12 the incapacitated person to suspend or terminate an account of the  
13 incapacitated person for good cause. A request made under this  
14 section shall be accompanied by a copy of the court order giving the  
15 guardian authority over the incapacitated person's property.

16  
17 15. Fiduciary Duty and Authority.

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

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

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

- 26 (1) except as otherwise provided in section 4 of this act, is  
27 subject to the applicable terms of service;
- 28 (2) is subject to other applicable law, including copyright law;
- 29 (3) is limited by the scope of the fiduciary's duties; and
- 30 (4) may not be used to impersonate the user.

31 c. A fiduciary with authority over the property of a decedent,  
32 incapacitated person, principal, or settlor has the right to access any  
33 digital asset in which the decedent, incapacitated person, principal,  
34 or settlor had a right or interest and that is not held by a custodian  
35 or subject to a terms-of-service agreement.

36 d. A fiduciary acting within the scope of the fiduciary's duties  
37 is an authorized user of the property of the decedent, incapacitated  
38 person, principal, or settlor for the purpose of applicable computer-  
39 fraud and unauthorized-computer-access laws, including but not  
40 limited to the provisions of P.L.1984, c.184 (C.2C:20-23 et seq.)  
41 and N.J.S.2C:20-2.

42 e. A fiduciary with authority over the tangible, personal  
43 property of a decedent, incapacitated person, principal, or settlor:

- 44 (1) has the right to access the property and any digital asset  
45 stored in it; and
- 46 (2) is an authorized user for the purpose of computer-fraud and  
47 unauthorized-computer-access laws, including but not limited to the

1 provisions of P.L.1984, c.184 (C.2C:20-23 et seq.) and  
2 N.J.S.2C:20-2.

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

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

9 (1) if the user is deceased, a copy of the death certificate of the  
10 user;

11 (2) a copy of the letters testamentary or letters of administration,  
12 court order, power of attorney, or trust giving the fiduciary  
13 authority over the account; and

14 (3) if requested by the custodian:

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

18 (b) evidence linking the account to the user; or

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

22

23 16. Custodian Compliance and Immunity.

24 a. Not later than 60 days after receipt of the information  
25 required under sections 7 through 15 of this act, a custodian shall  
26 comply with a request under this act from a fiduciary or designated  
27 recipient to disclose digital assets or terminate an account. If the  
28 custodian fails to comply, the fiduciary or designated recipient may  
29 apply to the court for an order directing compliance.

30 b. An order under subsection a. of this section directing  
31 compliance must contain a finding that compliance is not in  
32 violation of 18 U.S.C. s.2702.

33 c. A custodian may notify the user that a request for disclosure  
34 or to terminate an account was made under this act.

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

39 e. This act does not limit a custodian's ability to obtain or  
40 require a fiduciary or designated recipient requesting disclosure or  
41 termination under this act to obtain a court order which:

42 (1) specifies that an account belongs to the incapacitated person  
43 or principal;

44 (2) specifies that there is sufficient consent from the  
45 incapacitated person or principal to support the requested  
46 disclosure; and

47 (3) contains a finding required by law other than this act.

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

4

5 17. Uniformity of Application and Construction.

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

9

10 18. Relation to Electronic Signatures in Global and National  
11 Commerce Act.

12 This act modifies, limits, or supersedes the Electronic Signatures  
13 in Global and National Commerce Act, 15 U.S.C. s.7001 et seq., but  
14 does not modify, limit, or supersede section 101(c) of that act, 15  
15 U.S.C. s.7001(c), or authorize electronic delivery of any of the  
16 notices described in s.103(b) of that act, 15 U.S.C. s.7003(b).

17

18 19. Effective date and applicability.

19 This act shall take effect on the 90<sup>th</sup> day following enactment and  
20 shall apply to:

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

23 b. a personal representative acting for a decedent who died  
24 before, on, or after the effective date of this act;

25 c. a guardianship, whether the guardian was appointed before,  
26 on, or after the effective date of this act; and

27 d. a trustee acting under a trust created before, on, or after the  
28 effective date of this act.

29

30

31

## STATEMENT

32

33 This bill would enact the “Uniform Fiduciary Access to Digital  
34 Assets Act” (UFADAA). The act was promulgated by the Uniform  
35 Law Commission in 2014 and revised by the commission in 2015.

36 OVERVIEW OF THE BILL:

37 Under the UFADAA, the traditional power of a fiduciary to  
38 manage a person’s tangible property when that person dies or loses the  
39 ability to manage his own property would be extended to allow the  
40 fiduciary to manage digital assets. The act defines the term “digital  
41 assets” to mean a person’s digital property and electronic  
42 communications. The term does not include an underlying asset or  
43 liability unless the asset or liability is itself an electronic record.

44 The UFADAA allows fiduciaries to manage digital property, such  
45 as computer files, web domains, and virtual currency, but restricts a  
46 fiduciary’s access to electronic communications such as email, text  
47 messages, and social media accounts unless the original user consented  
48 in a will, trust, power of attorney, or other record.

1       The act encompasses four types of fiduciaries: (1) executors or  
2 administrators of deceased persons' estates; (2) court-appointed  
3 guardians of incapacitated persons; (3) agents appointed under powers  
4 of attorney; and (4) trustees.

5       The act would not apply to digital assets of an employer used by an  
6 employee during the ordinary course of business.

7       The act distinguishes between a "catalogue of electronic  
8 communications" (information that identifies each person with which a  
9 user has had an electronic communication, and the time and date of  
10 that communication) and the "content of an electronic communication"  
11 (information concerning the substance or meaning of the  
12 communication). The act provides that generally a fiduciary would  
13 have access to a catalogue of the user's communications, but not the  
14 content, unless the user consented to the disclosure of the content.

15       Under the act, a "custodian" is a person or entity that carries,  
16 maintains, processes, receives, or stores digital assets. The act  
17 provides that if a custodian provides an "online tool," separate from  
18 the general terms of service, that allows the user to name another  
19 person to have access to the user's digital assets or to direct the  
20 custodian to delete the user's digital assets, the user's online  
21 instructions would be enforceable.

22       If the custodian does not provide an online tool or if the user  
23 declines to use the online tool provided, the user may give directions  
24 for the disposition of digital assets in a will, trust, power of attorney, or  
25 other written record.

26       If the user has not provided any direction, either online or in an  
27 estate plan, the terms of service for the user's account would determine  
28 whether a fiduciary may access the user's digital assets. If the terms of  
29 service do not address fiduciary access, the default rules of the  
30 UFADAA would apply.

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

40       In order to gain access to digital assets, a fiduciary would be  
41 required to send a request to the custodian, accompanied by a copy of  
42 the document granting fiduciary authority, such as a letter of  
43 appointment, court order, or certification of trust.

44       Under the bill, custodians of digital assets would be immune from  
45 any liability for an act or omission done in good faith in compliance  
46 with the act.

1 SPECIFIC SECTIONS OF THE BILL:

2 Section 1: Designates the bill as the “Uniform Fiduciary Access to  
3 Digital Assets Act.”

4 Section 2: Sets out definitions of terms. Among other definitions,  
5 this section of the bill defines the term “court” to mean the Probate  
6 Part of the Chancery Division of the Superior Court, and including the  
7 Surrogate’s Court acting within the scope of its authority.

8 Section 3: Provides that the act applies to a custodian if the user  
9 resides in this State or resided in this State at the time of the user’s  
10 death, and provides that the act does not apply to a digital asset of an  
11 employer used by an employee in the ordinary course of the  
12 employer’s business.

13 Section 4: Sets out procedures concerning the use of an online tool  
14 to designate disclosure or non-disclosure of the user’s digital assets.

15 Section 5: Establishes that the terms-of-service agreement  
16 governing an online account applies to fiduciaries as well as users, and  
17 clarifies that a fiduciary or designated recipient would not have any  
18 new or expanded rights other than those held by the user.

19 Section 6: Gives the custodians of digital assets some discretion in  
20 determining disclosure of digital assets to fiduciaries. This section  
21 provides that a custodian may, for example, comply with a request for  
22 access by allowing the fiduciary to reset the password and access the  
23 user’s account. Under the act, a custodian may also comply without  
24 giving access to a user’s account by simply giving a copy of all the  
25 user’s digital assets to the fiduciary. This section also allows the  
26 custodian to assess a reasonable administrative charge for the cost of  
27 disclosing digital assets.

28 Section 6 provides that the custodian shall either: (1) grant a  
29 fiduciary or designated recipient full access to the account; (2) grant a  
30 fiduciary or designated recipient partial access; or (3) provide a  
31 fiduciary or designated recipient a copy in a record of any digital asset  
32 that the user could have accessed on the date the custodian received  
33 the request if the user were alive and had full capacity. Thus, the  
34 custodian would have discretion as to which method of disclosure to  
35 use, but would not have discretion to refuse disclosure.

36 Sections 7-14: Establishes the rights of personal representatives of  
37 an estate, guardians, agents acting pursuant to a power of attorney, and  
38 trustees. Each of the fiduciaries is subject to different rules for the  
39 content of communications protected under federal privacy laws and  
40 for other types of digital assets.

41 Section 15: Provides that the legal duties imposed on a fiduciary  
42 charged with managing tangible property apply to the management of  
43 digital assets, including the duty of care, the duty of loyalty, and the  
44 duty of confidentiality. Section 15 also provides that, except as  
45 otherwise provided in section 4 of the act concerning online tools, a  
46 fiduciary’s authority with respect to a digital asset is subject to the  
47 applicable terms of service, is subject to other applicable law,  
48 including copyright law, and may not be used to impersonate the user.

1 This section also authorizes a fiduciary to request a custodian to  
2 terminate the use's account and sets out the documentation that must  
3 accompany such a request, such as a copy of the death certificate,  
4 court order, power of attorney, or trust.

5 Section 16: Requires the custodian to comply with a request from a  
6 fiduciary within 60 days after receipt. If the custodian fails to comply,  
7 the fiduciary or designated recipient may apply to the court for an  
8 order directing compliance. (A "designated recipient" is a person  
9 chosen by the user, using an online tool, to administer the user's digital  
10 assets.) Section 16 also allows a custodian to deny a request from a  
11 fiduciary or designated recipient for disclosure of digital assets or to  
12 terminate an account if the custodian is aware of any lawful access to  
13 the account following the receipt of the fiduciary's request. This  
14 provision is intended to protect joint owners of the account.

15 Section 17: Provides that in applying and construing this uniform  
16 act, consideration must be given to the need to promote uniformity of  
17 the law with respect to its subject matter among states that enact it.

18 Section 18: Provides that the act modifies, limits, or supersedes  
19 the federal Electronic Signatures in Global and National Commerce  
20 Act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or  
21 supersede Section 101(c) of that act, 15 U.S.C. section 7001(c), or  
22 authorize electronic delivery of any of the notices described in section  
23 103(b) of that act, 15 U.S.C. section 7003(b).

24 Section 19: Provides that the act will take effect on the 90th day  
25 following enactment and would apply retroactively: the act would  
26 encompass a fiduciary acting under a will or power of attorney  
27 executed before, on, or after the effective date of the act; a personal  
28 representative acting for a decedent who died before, on, or after the  
29 effective date; a guardianship, whether the guardian was appointed  
30 before, on, or after the effective date; and a trustee acting under a trust  
31 created before, on, or after the effective date.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 2527**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 26, 2017

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2527.

This bill, as amended, would enact the “Uniform Fiduciary Access to Digital Assets Act” (UFADAA). The model act was promulgated by the Uniform Law Commission in 2014 and revised by the commission in 2015.

Under the bill, the traditional power of a fiduciary to manage a person’s tangible property when that person dies or loses the ability to manage his own property would be extended to allow the fiduciary to manage digital assets. The bill defines the term “digital assets” to mean a person’s digital property and electronic communications. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

The bill allows fiduciaries to manage digital property, such as 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 (i.e., account holder) consented in a will, trust, power of attorney, or other record.

The bill encompasses four types of fiduciaries: (1) executors or administrators of deceased persons’ estates; (2) court-appointed guardians of incapacitated persons; (3) agents appointed under powers of attorney; and (4) trustees.

The bill would not apply to digital assets of an employer used by an employee during the ordinary course of business.

The bill distinguishes between a “catalogue of electronic communications” (information that identifies each person with which a user has had an electronic communication, and the time and date of that communication) and the “content of an electronic communication” (information concerning the substance or meaning of the communication). The bill provides that generally a fiduciary would have access to a catalogue of the user’s communications, but not the content, unless the user consented to the disclosure of the content.

Under the bill, a “custodian” is a person or entity that carries, maintains, processes, receives, or stores digital assets. The bill provides that if a 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, the user's online instructions would be enforceable.

If the custodian does not provide an online tool or if the user declines to use the online tool provided, the user may give directions for the disposition of digital assets in a will, trust, power of attorney, or other written record.

If the user has not provided any direction, either online or in an estate plan, the terms of service for the user's account would determine whether a fiduciary may access the user's digital assets. If the terms of service do not address fiduciary access, the default rules presented in the bill would apply.

Under the bill, fiduciaries for digital assets would be subject to the same fiduciary duties that normally apply to tangible assets. Thus, for example, an executor would not be authorized to 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, a fiduciary would be required to send a request to the custodian, accompanied by a copy of the document granting fiduciary authority, such as a letter of appointment, court order, or certification of trust.

Under the bill, custodians of digital assets would be immune from any liability for an act or omission done in good faith in compliance with the bill.

#### SPECIFIC SECTIONS OF THE BILL:

Section 1: Designates the bill as the "Uniform Fiduciary Access to Digital Assets Act."

Section 2: Sets out definitions of terms. Among other definitions, this section of the bill defines the term "court" to mean the Probate Part of the Chancery Division of the Superior Court, and includes the Surrogate's Court acting within the scope of its authority.

Section 3: Provides that the bill applies to a custodian if the user resides in this State or resided in this State at the time of the user's death, and provides that the bill does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

Section 4: Sets out procedures concerning the use of an online tool to designate disclosure or non-disclosure of the user's digital assets.

Section 5: Establishes that the terms-of-service agreement governing an online account applies to fiduciaries as well as users, and clarifies that a fiduciary or designated recipient would not have any new or expanded rights other than those held by the user. A

“designated recipient” is a person chosen by the user, using an online tool made available by the custodian of an online account, to administer the user’s digital assets for that particular account.

Section 6: Gives the custodians of digital assets some discretion in determining disclosure of digital assets to fiduciaries and designated recipients. This section provides that a custodian may, for example, comply with a request for access to reset the password and access the user’s account. Under the bill, a custodian may also comply without giving access to a user’s account by simply giving a copy of all the user’s digital assets to the fiduciary or designated recipient. This section also allows the custodian to assess a reasonable administrative charge for the cost of disclosing digital assets.

With respect to disclosure, the custodian shall either: (1) grant a fiduciary or designated recipient full access to the account; (2) grant a fiduciary or designated recipient partial access; or (3) provide a fiduciary or designated recipient a copy in a record of any digital asset that the user could have accessed on the date the custodian received the request if the user were alive and had full capacity. Thus, the custodian would have discretion as to which method of disclosure to use, but would not have discretion to refuse disclosure.

Sections 7-14: Establishes the rights of personal representatives of an estate, guardians, agents acting pursuant to a power of attorney, and trustees. Each of the fiduciaries is subject to different rules for the content of communications protected under federal privacy laws and for other types of digital assets.

Section 15: Provides that the legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including the duty of care, the duty of loyalty, and the duty of confidentiality. The section also provides that, except as otherwise provided in section 4 of the bill concerning online tools, a fiduciary’s or designated recipient’s authority with respect to a digital asset: would be subject to the applicable terms of service; would be subject to other applicable law, including copyright law; in the case of a fiduciary, would be limited by the scope of the fiduciary’s duties; and may not be used to impersonate the user. This section also authorizes a fiduciary to make a request to a custodian to terminate the user’s account and sets out the documentation that must accompany such request, such as a copy of the death certificate, court order, power of attorney, or trust.

Section 16: Requires the custodian to comply with a request from a fiduciary or designated recipient, within 60 days after receipt, concerning the disclosure of digital assets or termination of a user’s account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance. This section also allows a custodian to deny a request from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any further lawful access to the

account following the receipt of the termination request; this is intended to protect joint owners of the account.

Section 17: Provides that in applying and construing the bill, intended as a multistate uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 18: Provides that the bill modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

Section 19: Provides that the bill would take effect on the 90th day following enactment and would apply retroactively. It would encompass a fiduciary acting under a will or power of attorney executed before, on, or after the effective date of the bill; a personal representative acting for a decedent who died before, on, or after the effective date; a guardianship, whether the guardian was appointed before, on, or after the effective date; and a trustee acting under a trust created before, on, or after the effective date.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 3433 (2R), also amended and reported today by the committee.

#### COMMITTEE AMENDMENTS

- add a reference to “designated representative” in section 15 of the bill, so that a fiduciary’s *or designated recipient’s* authority with respect to a digital asset: would be subject to the applicable terms of service; would be subject to other applicable law, including copyright law; in the case of a fiduciary, would be limited by the scope of the fiduciary’s duties; and may not be used to impersonate the user.

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## Governor Christie Takes Action On Pending Legislation

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### BILLS SIGNED:

**S-2512/A-4446 (Madden, Beach/Quijano)** - Concerns employee leasing agreements

**S-2563/A-4163 (Weinberg, T. Kean/Vainieri Huttle, Lampitt, O'Scanlon, McKnight)** - Clarifies DCA rulemaking authority over free-standing residential health care facilities, and prohibits eviction of residents from such facilities, except for good cause

**A-1661/S-3217 (Schaer, Danielsen, Dancer, Sumter/Cunningham)** - Expands eligibility of inmates for medical parole and requires inmate's enrollment in Medicaid under certain circumstances

**ACS for A-2511/SCS for S-2211 (Eustace/Turner)** - Requires life insurers to use federal death master file to identify potential matches

**A-3433/S-2527 (Greenwald, Jones, Singleton, Webber/Diegnan)** - "Uniform Fiduciary Access to Digital Assets Act"; authorizes executor, agent, guardian, or trustee, under certain circumstances, to manage electronic records of decedent, principal, incapacitated person, or trust creator

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