

This Document can be made available in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 200

01/15/2015 Authored by Hilstrom, Scott, Rosenthal, Draskowski, Zerwas and others
The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

1.1 A bill for an act
1.2 relating to civil law; enacting the Uniform Fiduciary Access to Digital Assets
1.3 Act; proposing coding for new law as Minnesota Statutes, chapter 521A.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. **[521A.01] SHORT TITLE.**

1.6 This chapter may be cited as the "Uniform Fiduciary Access to Digital Assets Act."

1.7 Sec. 2. **[521A.02] DEFINITIONS.**

1.8 Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

1.9 Subd. 2. **Account holder.** "Account holder" means a person that has entered into a
1.10 terms-of-service agreement with a custodian or a fiduciary for the person.

1.11 Subd. 3. **Agent.** "Agent" means an attorney-in-fact granted authority under a
1.12 durable or nondurable power of attorney.

1.13 Subd. 4. **Carries.** "Carries" means engages in the transmission of electronic
1.14 communications.

1.15 Subd. 5. **Catalog of electronic communications.** "Catalog of electronic
1.16 communications" means information that identifies each person with which an account
1.17 holder has had an electronic communication, the time and date of the communication,
1.18 and the electronic address of the person.

1.19 Subd. 6. **Conservator.** "Conservator" means a person appointed by a court
1.20 to manage the estate of a living individual. The term includes limited or unlimited
1.21 conservators appointed pursuant to section 524.5-401.

2.1 Subd. 7. **Content of an electronic communication.** "Content of an electronic
2.2 communication" means information concerning the substance or meaning of the
2.3 communication that:

2.4 (1) has been sent or received by the account holder;

2.5 (2) is in electronic storage by a custodian providing an electronic communication
2.6 service to the public or is carried or maintained by a custodian providing a remote
2.7 computing service to the public; and

2.8 (3) is not readily accessible to the public.

2.9 Subd. 8. **Court.** "Court" has the meaning given in section 524.1-201, clause (9).

2.10 Subd. 9. **Custodian.** "Custodian" means a person that carries, maintains, processes,
2.11 receives, or stores a digital asset of an account holder.

2.12 Subd. 10. **Digital asset.** "Digital asset" means a record that is electronic. The term
2.13 does not include an underlying asset or liability unless the asset or liability is itself a
2.14 record that is electronic.

2.15 Subd. 11. **Electronic.** "Electronic" means relating to technology having electrical,
2.16 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

2.17 Subd. 12. **Electronic communication.** "Electronic communication" has the
2.18 meaning given in United States Code, title 18, section 2510(12), as amended.

2.19 Subd. 13. **Electronic communication service.** "Electronic communication service"
2.20 means a custodian that provides to an account holder the ability to send or receive an
2.21 electronic communication.

2.22 Subd. 14. **Fiduciary.** "Fiduciary" means an original, additional, or successor
2.23 personal representative, conservator, agent, or trustee.

2.24 Subd. 15. **Governing instrument.** "Governing instrument" means a will, trust,
2.25 instrument creating a power of attorney, or other dispositive or nominative instrument.

2.26 Subd. 16. **Information.** "Information" means data, text, images, videos, sounds,
2.27 codes, computer programs, software, databases, or similar material.

2.28 Subd. 17. **Person.** "Person" means an individual, estate, business or nonprofit entity,
2.29 public corporation, government or governmental subdivision, agency, instrumentality,
2.30 or other legal entity.

2.31 Subd. 18. **Personal representative.** "Personal representative" has the meaning
2.32 given in section 524.1-201.

2.33 Subd. 19. **Power of attorney.** "Power of attorney" means a record that grants an
2.34 agent authority to act in the place of a principal, under chapter 523.

2.35 Subd. 20. **Principal.** "Principal" means an individual who grants authority to an
2.36 agent in a power of attorney.

3.1 Subd. 21. **Protected person.** "Protected person" means an individual for whom a
 3.2 conservator has been appointed. The term includes an individual for whom an application
 3.3 for the appointment of a conservator is pending.

3.4 Subd. 22. **Record.** "Record" means information that is inscribed on a tangible
 3.5 medium or that is stored in an electronic or other medium and is retrievable in perceivable
 3.6 form.

3.7 Subd. 23. **Remote computing service.** "Remote computing service" means a
 3.8 custodian that provides to an account holder computer processing services or the storage
 3.9 of digital assets by means of an electronic communications system, as defined in United
 3.10 States Code, title 18, section 2510(14), as amended.

3.11 Subd. 24. **Terms-of-service agreement.** "Terms-of-service agreement" means an
 3.12 agreement that controls the relationship between an account holder and a custodian.

3.13 Subd. 25. **Trustee.** "Trustee" means a fiduciary with legal title to property pursuant
 3.14 to an agreement or declaration that creates a beneficial interest in another pursuant to the
 3.15 Uniform Probate Code. The term includes a successor trustee.

3.16 Subd. 26. **Will.** "Will" includes a codicil, testamentary instrument that only appoints
 3.17 an executor and an instrument that revokes or revises a testamentary instrument.

3.18 **Sec. 3. [521A.03] APPLICABILITY.**

3.19 (a) This chapter applies to:

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

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

3.24 (3) a conservatorship proceeding, whether pending in a court or commenced before,
 3.25 on, or after the effective date of this act; and

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

3.28 (b) This chapter does not apply to a digital asset of an employer used by an employee
 3.29 in the ordinary course of the employer's business.

3.30 **Sec. 4. [521A.04] ACCESS BY PERSONAL REPRESENTATIVE TO DIGITAL**
 3.31 **ASSET OF DECEDENT.**

3.32 Subject to section 521A.08, paragraph (b), and unless otherwise ordered by the court
 3.33 or provided in the will of a decedent, the personal representative of the decedent has
 3.34 the right to access:

4.1 (1) the content of an electronic communication that the custodian is permitted to
 4.2 disclose under the Electronic Communications Privacy Act, United States Code, title
 4.3 18, section 2702(b), as amended;

4.4 (2) any catalog of electronic communications sent or received by the decedent; and

4.5 (3) any other digital asset in which at death the decedent had a right or interest.

4.6 **Sec. 5. [521A.05] ACCESS BY CONSERVATOR TO DIGITAL ASSET OF**
 4.7 **PROTECTED PERSON.**

4.8 Subject to section 521A.08, paragraph (b), the court, after an opportunity for hearing
 4.9 under chapter 524, the Uniform Probate Code, may grant a conservator the right to access:

4.10 (1) the content of an electronic communication that the custodian is permitted to
 4.11 disclose under the Electronic Communications Privacy Act, United States Code, title
 4.12 18, section 2702(b), as amended;

4.13 (2) any catalog of electronic communications sent or received by the protected
 4.14 person; and

4.15 (3) any other digital asset in which the protected person has a right or interest.

4.16 **Sec. 6. [521A.06] ACCESS BY AGENT TO DIGITAL ASSET OF PRINCIPAL.**

4.17 (a) To the extent a power of attorney expressly grants an agent authority over the
 4.18 content of an electronic communication of the principal and subject to section 521A.08,
 4.19 paragraph (b), the agent has the right to access the content of an electronic communication
 4.20 that the custodian is permitted to disclose under the Electronic Communications Privacy
 4.21 Act, United States Code, title 18, section 2702(b), as amended.

4.22 (b) Subject to section 521A.08, paragraph (b), and unless otherwise ordered by the
 4.23 court or provided by a power of attorney, an agent has the right to access:

4.24 (1) any catalog of electronic communications sent or received by the principal; and

4.25 (2) any other digital asset in which the principal has a right or interest.

4.26 **Sec. 7. [521A.07] ACCESS BY TRUSTEE TO DIGITAL ASSET.**

4.27 (a) Subject to section 521A.08, paragraph (b), and unless otherwise ordered by the
 4.28 court or provided in a trust, a trustee that is an original account holder has the right to
 4.29 access any digital asset held in trust, including any catalog of electronic communications
 4.30 of the trustee and the content of an electronic communication.

4.31 (b) Subject to section 521A.08, paragraph (b), and unless otherwise ordered by the
 4.32 court or provided in a trust, a trustee that is not an original account holder has the right
 4.33 to access:

5.1 (1) the content of an electronic communication that the custodian is permitted to
 5.2 disclose under the Electronic Communications Privacy Act, United States Code, title
 5.3 18, section 2702(b), as amended;

5.4 (2) any catalog of electronic communications sent or received by the original or
 5.5 any successor account holder; and

5.6 (3) any other digital asset in which the original or any successor account holder has
 5.7 a right or interest.

5.8 **Sec. 8. [521A.08] FIDUCIARY AUTHORITY.**

5.9 (a) A fiduciary that is an account holder or has the right under this chapter to access
 5.10 a digital asset of an account holder:

5.11 (1) subject to the terms-of-service agreement, copyright law, and other applicable
 5.12 law, may take any action concerning the asset to the extent of the account holder's
 5.13 authority and the fiduciary's power under the law of this state other than this chapter;

5.14 (2) has, for the purpose of applicable electronic privacy laws, the lawful consent of
 5.15 the account holder for the custodian to divulge the content of an electronic communication
 5.16 to the fiduciary; and

5.17 (3) is, for the purpose of applicable computer fraud and unauthorized computer
 5.18 access laws, including section 609.891, an authorized user.

5.19 (b) Unless an account holder, after the effective date of this act, agrees to a provision
 5.20 in a terms-of-service agreement that limits a fiduciary's access to a digital asset of the
 5.21 account holder by an affirmative act separate from the account holder's assent to other
 5.22 provisions of the agreement:

5.23 (1) the provision is void as against the strong public policy of this state; and

5.24 (2) the fiduciary's access under this chapter to a digital asset does not violate the
 5.25 terms-of-service agreement even if the agreement requires notice of a change in the
 5.26 account holder's status.

5.27 (c) A choice of law provision in a terms-of-service agreement is unenforceable
 5.28 against a fiduciary acting under this chapter to the extent the provision designates law
 5.29 that enforces a limitation on a fiduciary's access to a digital asset, and the limitation is
 5.30 void under paragraph (b).

5.31 (d) As to tangible personal property capable of receiving, storing, processing, or
 5.32 sending a digital asset, a fiduciary with authority over the property of a decedent, protected
 5.33 person, principal, or settlor:

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

6.1 (2) is an authorized user for purposes of any applicable computer fraud and
 6.2 unauthorized computer access laws, including section 609.891.

6.3 **Sec. 9. [521A.09] COMPLIANCE.**

6.4 (a) If a fiduciary with a right under this chapter to access a digital asset of an account
 6.5 holder complies with paragraph (b), the custodian shall comply with the fiduciary's
 6.6 request in a record for:

6.7 (1) access to the asset;

6.8 (2) control of the asset; and

6.9 (3) a copy of the asset to the extent permitted by copyright law.

6.10 (b) If a request under paragraph (a) is made by:

6.11 (1) a personal representative with the right of access under section 521A.04, the
 6.12 request must be accompanied by a certified copy of the letter of appointment of the
 6.13 representative, court order, or Affidavit of Collection of Personal Property executed
 6.14 pursuant to section 524.3-1201;

6.15 (2) a conservator with the right of access under section 521A.05, the request must be
 6.16 accompanied by a certified copy of the court order that gives the conservator authority
 6.17 over the digital asset;

6.18 (3) an agent with the right of access under section 521A.06, the request must be
 6.19 accompanied by an original or a copy of the power of attorney that authorizes the agent to
 6.20 exercise authority over the digital asset and a certification of the agent, under penalty of
 6.21 perjury, that the power of attorney is in effect; and

6.22 (4) a trustee with the right of access under section 521A.07, the request must be
 6.23 accompanied by a certified copy of the trust instrument, or a certification of the trust under
 6.24 section 501B.56, that authorizes the trustee to exercise authority over the digital asset.

6.25 (c) A custodian shall comply with a request made under paragraph (a) not later than
 6.26 60 days after receipt. If the custodian fails to comply, the fiduciary may apply to the
 6.27 court for an order directing compliance.

6.28 (d) Instead of furnishing a copy of the trust instrument under paragraph (b), clause
 6.29 (4), the trustee may provide a certification of trust. The certification:

6.30 (1) must contain the following information:

6.31 (i) documentation that the trust exists and the date the trust instrument was executed;

6.32 (ii) the identity of the settlor;

6.33 (iii) the identity and address of the trustee;

6.34 (iv) documentation that there is nothing inconsistent in the trust with respect to the
 6.35 trustee's powers over digital assets;

7.1 (v) whether the trust is revocable and the identity of any person holding a power
 7.2 to revoke the trust;

7.3 (vi) whether a cotrustee has authority to sign or otherwise authenticate; and

7.4 (vii) whether all or fewer than all cotrustees are required to exercise powers of
 7.5 the trustee;

7.6 (2) must be signed or otherwise authenticated by a trustee;

7.7 (3) must state that the trust has not been revoked, modified, or amended in a
 7.8 manner that would cause the representations contained in the certification of trust to be
 7.9 incorrect; and

7.10 (4) need not contain the dispositive terms of the trust.

7.11 (e) A custodian that receives a certification under paragraph (d) may require
 7.12 the trustee to provide copies of excerpts from the original trust instrument and later
 7.13 amendments designating the trustee and conferring on the trustee the power to act in
 7.14 the pending transaction.

7.15 (f) A custodian that acts in reliance on a certification under paragraph (d) without
 7.16 knowledge that the representations contained in it are incorrect is not liable to any person for
 7.17 so acting and may assume without inquiry the existence of facts stated in the certification.

7.18 (g) A person that in good faith enters into a transaction in reliance on a certification
 7.19 under paragraph (d) may enforce the transaction against the trust property as if the
 7.20 representations contained in the certification were correct.

7.21 (h) A person that demands the trust instrument in addition to a certification under
 7.22 paragraph (d) or excerpts under paragraph (e) is liable for damages, including attorney fees,
 7.23 if the court determines that the person did not act in good faith in demanding the instrument.

7.24 (i) This section does not limit the right of a person to obtain a copy of a trust
 7.25 instrument in a judicial proceeding concerning the trust.

7.26 **Sec. 10. [521A.10] CUSTODIAN IMMUNITY.**

7.27 A custodian and its officers, employees, and agents are immune from liability for an
 7.28 act or omission done in good faith in compliance with this chapter.

7.29 **Sec. 11. [521A.11] UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

7.30 In applying and construing this chapter, consideration must be given to the need to
 7.31 promote uniformity of the law with respect to its subject matter among states that enact it.

7.32 **Sec. 12. [521A.12] RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
 7.33 **AND NATIONAL COMMERCE ACT.**

8.1 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
8.2 National Commerce Act, United States Code, title 15, section 7001 et seq., but does not
8.3 modify, limit, or supersede section 101(c) of that act, United States Code, title 15, section
8.4 7001(c), or authorize electronic delivery of any of the notices described in section 103(b)
8.5 of that act, United States Code, title 15, section 7003(b).

8.6 Sec. 13. **[521A.13] SEVERABILITY.**

8.7 If any provision of this chapter or its application to any person or circumstance is
8.8 held invalid, the invalidity does not affect other provisions or applications of this chapter
8.9 that can be given effect without the invalid provision or application and, to this end, the
8.10 provisions of this chapter are severable.

8.11 Sec. 14. **EFFECTIVE DATE.**

8.12 This act is effective the day following final enactment.