

## STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND EIGHTEEN

—  
H.P. 595 - L.D. 846

**An Act To Enact the Revised Uniform Fiduciary Access to Digital Assets Act**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** Maine law currently does not address how a fiduciary, such as a personal representative, can access and manage digital assets and communication; and

**Whereas,** Maine law currently does not address the authority of custodians of digital assets and communications to deal with fiduciaries; and

**Whereas,** the Revised Uniform Fiduciary Access to Digital Assets Act establishes procedures, standards and legal responsibilities to ensure the proper management and protection of digital assets and communications, consistent with federal requirements; and

**Whereas,** the sooner these issues are resolved, the sooner fiduciaries can manage and protect digital assets and communications to the extent authorized by this law; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

**PART A**

**Sec. A-1. 18-A MRSA Art. 10** is enacted to read:

**ARTICLE 10**

## MAINE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

### §10-101. Short title

This Article may be known and cited as "the Maine Revised Uniform Fiduciary Access to Digital Assets Act."

### §10-102. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings.

**1. Account.** "Account" means an arrangement under a terms of service agreement in which a custodian carries, maintains, processes, receives or stores a digital asset of a user or provides goods or services to a user.

**2. Agent.** "Agent" means an attorney in fact granted authority under a durable or nondurable power of attorney.

**3. Carries.** "Carries" means engages in the transmission of an electronic communication.

**4. Catalog of electronic communications.** "Catalog of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication and the electronic address of the person.

**5. Conservator.** "Conservator" means a person appointed by a court to manage the estate of a living individual. "Conservator" includes a limited conservator and a guardian exercising the powers of a conservator when a conservator has not been appointed.

**6. Content of an electronic communication.** "Content of an electronic communication" means information concerning the substance or meaning of an electronic communication that:

A. Has been sent or received by a user;

B. Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

C. Is not readily accessible to the public.

**7. Custodian.** "Custodian" means a person that carries, maintains, processes, receives or stores a digital asset of a user.

**8. Designated recipient.** "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

**9. Digital asset.** "Digital asset" means an electronic record in which an individual has a right or interest. "Digital asset" does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

**10. Electronic.** "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

**11. Electronic communication.** "Electronic communication" has the same meaning as in 18 United States Code, Section 2510(12).

**12. Electronic communication service.** "Electronic communication service" means a service that provides to a user the ability to send or receive an electronic communication.

**13. Fiduciary.** "Fiduciary" means an original, additional or successor personal representative, conservator, agent or trustee.

**14. Information.** "Information" means data, text, images, videos, sounds, codes, computer programs, software and databases or the like.

**15. Online tool.** "Online tool" means an electronic service provided by a custodian that allows a user, in an agreement distinct from the terms of service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a 3rd person.

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

**17. Personal representative.** "Personal representative" means an executor, administrator, special administrator or person that performs substantially the same function under the laws of this State other than this Act and a person claiming to be a successor of the decedent user who presents an affidavit under section 3-1201.

**18. Power of attorney.** "Power of attorney" means a record that grants an agent authority to act in the place of a principal.

**19. Principal.** "Principal" means an individual who grants authority to an agent in a power of attorney.

**20. Protected person.** "Protected person" means an individual for whom a conservator has been appointed. "Protected person" includes an individual for whom an application for the appointment of a conservator is pending and an individual for whom a guardian has been appointed, when no conservator has been appointed.

**21. Record.** "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**22. Remote computing service.** "Remote computing service" means a service that provides to a user computer processing services or the storage of digital assets by means

of an electronic communications system as defined in 18 United States Code, Section 2510(14).

**23. Terms of service agreement.** "Terms of service agreement" means an agreement, as defined in Title 11, section 1-1201, subsection (3), that controls the relationship between a user and a custodian.

**24. Trustee.** "Trustee" means a fiduciary with legal title to property pursuant to an agreement or declaration that creates a beneficial interest in another person. "Trustee" includes a successor trustee.

**25. User.** "User" means a person that has an account with a custodian.

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

### **§10-103. Applicability**

**1. Applicable date.** This Act applies to:

A. A fiduciary or agent acting under a will or power of attorney executed before, on or after July 1, 2018;

B. A personal representative acting for a decedent who died before, on or after July 1, 2018;

C. A conservatorship proceeding commenced before, on or after July 1, 2018; and

D. A trustee acting under a trust created before, on or after July 1, 2018.

**2. User resident of this State.** This 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.

**3. Digital asset of employer.** This Act does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

### **§10-104. User direction for disclosure of digital assets**

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

**2. No online tool used.** If a user has not used an online tool to give direction under subsection 1 or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney or other record disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications.

**3. User direction overrides.** A user's direction under subsection 1 or 2 overrides a contrary provision in a terms of service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

#### **§10-105. Terms of service agreement**

**1. Rights of custodian or user not changed or impaired.** This Act does not change or impair a right of a custodian or a user under a terms of service agreement to access and use digital assets of the user.

**2. No new or expanded rights to fiduciary or designated recipient.** This Act does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

**3. Fiduciary's or designated recipient's access may be modified or eliminated.** A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law or by a terms of service agreement if the user has not provided direction under section 10-104.

#### **§10-106. Procedure for disclosing digital assets**

**1. Disclosure at discretion of custodian.** When disclosing digital assets of a user under this Act, the custodian may at its sole discretion:

- A. Grant a fiduciary or designated recipient full access to the user's account;
- B. Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or
- C. Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

**2. Administrative charge.** A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this Act.

**3. Deleted digital assets.** A custodian need not disclose under this Act a digital asset deleted by a user.

**4. Undue burden on custodian; court order to disclose.** If a user directs or a fiduciary requests a custodian to disclose under this Act some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

- A. A subset limited by date of the user's digital assets;
- B. All of the user's digital assets to the fiduciary or designated recipient;

C. None of the user's digital assets; or

D. All of the user's digital assets to the court for review in camera.

**§10-107. Disclosure of content of electronic communications of deceased user**

If a deceased user consented to or a court directs disclosure of the content of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication if the representative gives the custodian:

**1. Written request.** A written request for disclosure in physical or electronic form;

**2. Death certificate.** A copy of the death certificate of the user;

**3. Letters of appointment or court order.** A copy of the letters of appointment of the personal representative or court order;

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

**5. Information requested by custodian.** If requested by the custodian:

A. A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

B. Evidence linking the account to the user; or

C. A finding by the court that:

(1) The user had a specific account with the custodian, identifiable by the information specified in paragraph A;

(2) Disclosure of the content of electronic communications of the user would not violate 18 United States Code, Section 2701 et seq., 47 United States Code, Section 222 or other applicable law;

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

(4) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

**§10-108. Disclosure of other digital assets of deceased user**

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

**1. Written request.** A written request for disclosure in physical or electronic form;

**2. Death certificate.** A copy of the death certificate of the user;

**3. Letters of appointment or court order.** A copy of the letters of appointment of the personal representative or court order; and

**4. Information requested by custodian.** If requested by the custodian:

**A.** A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

**B.** Evidence linking the account to the user;

**C.** An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

**D.** A finding by the court that:

(1) The user had a specific account with the custodian, identifiable by the information specified in paragraph A; or

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

#### **§10-109. Disclosure of content of electronic communications of principal**

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

**1. Written request.** A written request for disclosure in physical or electronic form;

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

**3. Agent's certificate.** A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

**4. Information requested by custodian.** If requested by the custodian:

**A.** A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

**B.** Evidence linking the account to the principal.

#### **§10-110. Disclosure of other digital assets of principal**

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

**1. Written request.** A written request for disclosure in physical or electronic form;

**2. Power of attorney.** An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

**3. Agent's certificate.** A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

**4. Information requested by custodian.** If requested by the custodian:

A. A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

B. Evidence linking the account to the principal.

**§10-111. Disclosure of digital assets held in trust when trustee is original user**

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

**§10-112. Disclosure of content of electronic communications held in trust when trustee is not original user**

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

**1. Written request.** A written request for disclosure in physical or electronic form;

**2. Trust instrument or certification of trust.** A certified copy of the trust instrument or a certification of the trust under Title 18-B, section 1013 that includes consent to disclosure of the content of electronic communications to the trustee;

**3. Trustee's certification.** A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

**4. Information requested by custodian.** If requested by the custodian:

A. A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

B. Evidence linking the account to the trust.



**§10-113. Disclosure of other digital assets held in trust when trustee is not original user**

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

- 1. Written request.** A written request for disclosure in physical or electronic form;
- 2. Trust instrument or certification of trust.** A certified copy of the trust instrument or a certification of the trust under Title 18-B, section 1013;
- 3. Trustee's certification.** A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- 4. Information requested by custodian.** If requested by the custodian:
  - A. A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
  - B. Evidence linking the account to the trust.

**§10-114. Disclosure of digital assets to conservator of protected person**

**1. Court order granting access.** After an opportunity for a hearing under Article 5, Part 4, the court may grant a conservator access to the digital assets of a protected person.

**2. Disclosure by custodian.** Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalog of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

- A. A written request for disclosure in physical or electronic form;
- B. A certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and
- C. If requested by the custodian:
  - (1) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or
  - (2) Evidence linking the account to the protected person.

**3. Request to suspend or terminate account.** A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this subsection must be accompanied by a copy of the court order giving the conservator authority over the protected person's property.

## **§10-115. Fiduciary duty and authority**

**1. Fiduciary's legal duties.** The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

- A. The duty of care;
- B. The duty of loyalty; and
- C. The duty of confidentiality.

**2. Limitations on fiduciary's or designated recipient's authority.** A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

- A. Except as otherwise provided in section 10-104, is subject to the applicable terms of service agreement;
- B. Is subject to other applicable law, including copyright law;
- C. In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
- D. May not be used to impersonate the user.

**3. Right to access.** A fiduciary with authority over the property of a decedent, protected person, principal or settlor has the right to access any digital asset in which the decedent, protected person, principal or settlor had a right or interest and that is not held by a custodian or subject to a terms of service agreement.

**4. Authorized user.** A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including Title 17-A, chapter 18.

**5. Fiduciary's authority to access; authorized user.** A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal or settlor:

- A. Has the right to access the property and any digital asset stored in it; and
- B. Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including Title 17-A, chapter 18.

**6. Disclosure of information to terminate account.** A custodian may disclose information in an account to a fiduciary of a user when the information is required to terminate an account used to access digital assets licensed to the user.

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

- A. If the user is deceased, a copy of the death certificate of the user;
- B. A copy of the letters of appointment of the personal representative or court order, power of attorney or trust giving the fiduciary authority over the account; and
- C. If requested by the custodian:

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

(2) Evidence linking the account to the user; or

(3) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (1).

#### **§10-116. Custodian compliance and immunity**

**1. Disclose or terminate upon request; court order.** Not later than 60 days after receipt of the information required under sections 10-107 to 10-115, a custodian shall comply with a request under this Act from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

**2. Finding that compliance not in violation.** An order under subsection 1 directing compliance must contain a finding that compliance is not in violation of 18 United States Code, Section 2702.

**3. Notification to user.** A custodian may notify the user that a request for disclosure or to terminate an account was made under this Act.

**4. Denial of request if subsequent lawful access.** A custodian may deny a request under this Act 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.

**5. Court order.** This Act does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this Act to obtain a court order that:

A. Specifies that an account belongs to the protected person or principal;

B. Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

C. Contains a finding required by law other than this Act.

**6. Immunity.** A custodian and its officers, employees and agents are immune from liability for an act or omission done in good faith in compliance with this Act.

#### **§10-117. Uniformity of application and construction**

In applying and construing this 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.

#### **§10-118. Relation to Electronic Signatures in Global and National Commerce Act**

This Act modifies, limits or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section

7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b).

## PART B

**Sec. B-1. 18-A MRSA §1-201, sub-§(33)**, as enacted by PL 1979, c. 540, §1, is amended to read:

**(33).** "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership, including a digital asset as defined in section 10-102, subsection 9.

**Sec. B-2. 18-A MRSA §5-931, sub-§(a), ¶¶(7) and (8)**, as enacted by PL 2009, c. 292, §2 and affected by §6, are amended to read:

- (7). Exercise fiduciary powers that the principal has authority to delegate; ~~or~~
- (8). Disclaim property, including a power of appointment; or

**Sec. B-3. 18-A MRSA §5-931, sub-§(a), ¶(9)** is enacted to read:

(9). Exercise authority over the content of an electronic communication of the principal in accordance with the Maine Revised Uniform Fiduciary Access to Digital Assets Act.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect July 1, 2018.