

CHAPTER.....

AN ACT relating to digital assets; enacting the Revised Uniform Fiduciary Access to Digital Assets Act; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

This bill enacts the Revised Fiduciary Access to Digital Assets Act promulgated by the Uniform Law Commission in 2015. Generally, this bill enacts provisions to give: (1) certain fiduciaries and other designated persons the legal authority to manage the digital assets and electronic communications of deceased or incapacitated persons; and (2) custodians of digital assets and electronic communications the legal authority to deal with a fiduciary or designated recipient of a person holding an account with the custodian.

Section 31 of this bill sets forth the applicability of this bill. Under **section 31**, the provisions of this bill apply to an agent under a power of attorney for a principal who resides in this State, a personal representative of a deceased person who resided in this State at the time of his or her death, a guardian of a ward who resides in this State and certain trustees under a trust. **Section 31** also provides that this bill applies to a custodian of a digital asset if a person holding an account with the custodian resides in this State or resided in this State at the time of his or her death. Finally, **section 31** states that this bill does not apply to a digital asset of an employer that was used by an employee in the ordinary course of the employer’s business and, thus, a fiduciary or designated recipient for the employee would not have access to electronic mail or other digital assets belonging to the employer.

Section 32 of this bill sets forth rules for determining the intent of a person who holds an account with a custodian with respect to his or her digital assets held by the custodian. Under **section 32**, if the custodian allows an account holder to use an online tool to provide directions for handling digital assets and the account holder has used the online tool to give directions for the disclosure or nondisclosure of a digital asset, the directions expressed using the online tool prevail over any other direction. If the custodian does not provide such an online tool or the account holder does not use the online tool to give directions concerning his or her digital assets, any directions given in the account holder’s will, trust, power of attorney or other record must be followed. If the account holder does not give any direction with respect to his or her digital assets, the terms-of-service agreement will apply. If the terms-of-service agreement does not address whether or not a fiduciary has access to the digital assets of an account holder, the default rules of this bill will apply.

Section 33 of this bill provides that if a fiduciary or designated recipient of an account holder accesses the account holder’s digital assets, the terms-of-service agreement between the custodian and the account holder applies to the fiduciary or designated recipient.

Section 34 of this bill governs the manner in which a custodian is required to respond to a request from a fiduciary or designated recipient for access to the digital assets of a person holding an account with the custodian. Under **section 34**, a custodian is authorized to select one of the following methods for granting access to the account: (1) granting the fiduciary or designated recipient full access to the account; (2) granting the fiduciary or designated recipient partial access to the account sufficient to perform the tasks for which the fiduciary or designated recipient has requested access to the account; or (3) provide the fiduciary or designated recipient a copy of any electronic record that the account holder could



have accessed. **Section 34** also provides that a custodian: (1) is not required to disclose digital assets if segregation of the digital assets would impose an undue burden on the custodian; and (2) is authorized to seek a court order regarding the disclosure of digital assets if a direction or request for disclosure would impose an undue burden. **Section 34** further provides that a custodian is not required to disclose a digital asset that has been deleted by the account holder. Finally, **section 34** authorizes a custodian to charge a reasonable administrative fee for disclosing digital assets.

Sections 35-42 of this bill establish the right of a fiduciary of an account holder to obtain disclosure of the content of an electronic communication or other digital asset of the account holder. Generally, under **sections 35-38** a custodian: (1) is required to disclose the content of an electronic communication to a personal representative of a deceased account holder or an agent under a power of attorney only if the personal representative or agent provides certain documentation to the custodian and the account holder has consented to the disclosure or a court has directed the disclosure; and (2) is required to disclose other digital assets of an account holder to the personal representative or agent unless the account holder prohibited disclosure of the digital asset or a court prohibits the disclosure. **Sections 39-41** generally require a custodian to disclose the content of an electronic communication or any other digital asset to a trustee who requests such disclosure unless otherwise provided in a court order, direction from the account holder or trust instrument. Under **section 42** of this bill: (1) a court is authorized to grant a guardian access to the digital assets of a ward after notice and an opportunity for a hearing; and (2) a custodian is required to disclose such digital assets to a guardian unless otherwise provided in a court order or direction from the account holder.

Section 43 of this bill sets forth the extent of the authority of a fiduciary for an account holder over the digital assets of the account holder. Under **section 43**, a fiduciary who manages digital assets is subject to the same fiduciary duties that apply to the fiduciary's management of tangible personal property, including, without limitation, the duty of care, the duty of loyalty and the duty of confidentiality. In addition, **section 43** specifies that the fiduciary's authority over a digital asset: (1) is subject to the terms-of-service agreement unless that agreement is overridden by certain actions; (2) is subject to other applicable laws, including, without limitation, copyright law; and (3) may not be used to impersonate the account holder. **Section 43** further specifies that the fiduciary is an authorized user for the purposes of certain laws prohibiting computer fraud and unauthorized access to a computer. Finally, **section 43** authorizes a fiduciary to request the termination of an account if the termination would not violate a fiduciary duty.

Section 44 of this bill: (1) requires a custodian to comply with the request of a fiduciary for disclosure of digital assets within 60 days after receipt of a complete request; and (2) authorizes a fiduciary to apply to a court for an order directing compliance if the custodian fails to comply with the request. **Section 44** further authorizes a custodian to: (1) notify an account holder of a request for disclosure of digital assets or for termination of an account; and (2) deny a request for disclosure of digital assets or for termination of an account if the custodian is aware of lawful access to the account after receipt of the request. Finally, **section 44** provides that a custodian and its officers, employees and agents are immune from liability for any act or omission done in good faith and in compliance with this bill.

Section 47 of this bill repeals a provision of existing law which authorizes the personal representative of a deceased person to direct the termination of any account of the deceased person on any Internet website providing social networking, electronic mail or certain other services because such authority would be granted under the provisions of this bill.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 59 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 46, inclusive, of this act.

Sec. 2. *This chapter may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act of 2015.*

Sec. 3. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 30, inclusive, of this act have the meaning ascribed to them in those sections.*

Sec. 4. *“Account” means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives or stores a digital asset of the user or provides goods or services to the user.*

Sec. 5. *“Agent” means an attorney-in-fact granted authority under a durable or nondurable power of attorney.*

Sec. 6. *“Carries” means engages in the transmission of an electronic communication.*

Sec. 7. *“Catalogue 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.*

Sec. 8. *“Content of an electronic communication” means information concerning the substance or meaning of the communication that:*

- 1. Has been sent or received by a user;*
- 2. 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*
- 3. Is not readily accessible to the public.*

Sec. 9. *“Court” means a district court of this State.*

Sec. 10. *“Custodian” means a person that carries, maintains, processes, receives or stores a digital asset of a user.*

Sec. 11. *“Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user.*

Sec. 12. *“Digital asset” means an electronic record in which a natural person has a right or interest. The term does not include*



an underlying asset or liability unless the asset or liability is itself an electronic record.

Sec. 13. *“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.*

Sec. 14. *“Electronic communication” has the meaning set forth in 18 U.S.C. § 2510(12).*

Sec. 15. *“Electronic-communication service” means a custodian that provides to a user the ability to send or receive an electronic communication.*

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

Sec. 17. *“Guardian” means a person appointed by a court to manage the estate of a living natural person. The term includes a special guardian as defined in NRS 159.026.*

Sec. 18. *“Information” means data, text, images, videos, sounds, codes, computer programs, software, databases or the like.*

Sec. 19. *“Online tool” means an electronic service provided by a custodian that allows the 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 third person.*

Sec. 20. *“Person” means a natural person, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.*

Sec. 21. *“Personal representative” means an executor, administrator, special administrator or person that performs substantially the same function under law of this State other than this chapter.*

Sec. 22. *“Power of attorney” means a record that grants an agent authority to act in the place of a principal.*

Sec. 23. *“Principal” means a natural person who grants authority to an agent in a power of attorney.*

Sec. 24. *“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.*

Sec. 25. *“Remote-computing service” means a custodian 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 U.S.C. § 2510(14).*

Sec. 26. *“Terms-of-service agreement” means an agreement that controls the relationship between a user and a custodian.*



Sec. 27. *“Trustee” means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.*

Sec. 28. *“User” means a person that has an account with a custodian.*

Sec. 29. *“Ward” means a natural person for whom a guardian has been appointed. The term includes a natural person for whom an application for the appointment of a guardian is pending.*

Sec. 30. *“Will” includes a codicil, testamentary instrument that only appoints an executor and instrument that revokes or revises a testamentary instrument.*

Sec. 31. *1. This chapter applies to:*

(a) A fiduciary acting under a will or power of attorney executed before, on or after October 1, 2017;

(b) A personal representative acting for a decedent who died before, on or after October 1, 2017;

(c) A guardianship proceeding commenced before, on or after October 1, 2017; and

(d) A trustee acting under a trust created before, on or after October 1, 2017.

2. This chapter 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. This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer’s business.

Sec. 32. *1. 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. 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 sent or received by the user.

3. 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.

Sec. 33. *1. This chapter 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. This chapter 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. 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 32 of this act.

Sec. 34. *1. When disclosing digital assets of a user under this chapter, 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. A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

3. A custodian need not disclose under this chapter a digital asset deleted by a user.

4. If a user directs or a fiduciary requests a custodian to disclose under this chapter 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.

Sec. 35. *If a deceased user consented or a court directs disclosure of the contents 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 sent or received by the user if the representative gives the custodian:

- 1. A written request for disclosure in physical or electronic form;*
- 2. A certified copy of the death certificate of the user;*
- 3. A certified copy of the court order appointing the representative;*
- 4. 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. 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 U.S.C. §§ 2701 et seq. or 47 U.S.C. § 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.*

Sec. 36. *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 catalogue 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. A written request for disclosure in physical or electronic form;*
- 2. A certified copy of the death certificate of the user;*
- 3. A certified copy of court order appointing the representative; and*
- 4. If requested by the custodian:*



(a) *A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the 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.*

Sec. 37. *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 if the agent gives the custodian:*

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

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

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

4. *If requested by the custodian:*

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

(b) *Evidence linking the account to the principal.*

Sec. 38. *Unless otherwise ordered by the court, directed by the principal or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:*

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

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

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

4. *If requested by the custodian:*



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

(b) Evidence linking the account to the principal.

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

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

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

2. A certified copy of the trust instrument or a certification of trust pursuant to NRS 164.400 to 164.440, inclusive, that includes consent to disclosure of the content of electronic communications to the trustee;

3. 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. 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.

Sec. 41. *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 catalogue 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. A written request for disclosure in physical or electronic form;

2. A certified copy of the trust instrument or a certification of trust pursuant to NRS 164.400 to 164.440, inclusive;



3. *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. *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.*

Sec. 42. 1. *After an opportunity for a hearing under chapter 159 or 160 of NRS, the court may grant a guardian access to the digital assets of a ward.*

2. *Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a guardian the catalogue of electronic communications sent or received by a ward and any digital assets, other than the content of electronic communications, in which the ward has a right or interest if the guardian 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 guardian authority over the digital assets of the ward; 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 ward; or*

(2) *Evidence linking the account to the ward.*

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

Sec. 43. 1. *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. *A fiduciary's or designated recipient's authority with respect to a digital asset of a user:*

(a) *Except as otherwise provided in section 32 of this act, is subject to the applicable terms of service;*

(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. A fiduciary with authority over the property of a decedent, ward, principal or settlor has the right to access any digital asset in which the decedent, ward, 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. A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, ward, principal or settlor for the purpose of NRS 205.473 to 205.513, inclusive.

5. A fiduciary with authority over the tangible personal property of a decedent, ward, 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.

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

7. 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 certified copy of the death certificate of the user;

(b) A certified copy of the court order appointing the representative, 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).

Sec. 44. 1. *Not later than 60 days after receipt of the information required under sections 35 to 43, inclusive, of this act, a custodian shall comply with a request under this chapter 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. An order under subsection 1 directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. § 2702.

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

4. A custodian may deny a request under this chapter 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. This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order which:

(a) Specifies that an account belongs to the ward or principal;

(b) Specifies that there is sufficient consent from the ward or principal to support the requested disclosure; and

(c) Contains a finding required by law other than this chapter.

6. 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 chapter.

Sec. 45. *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.*

Sec. 46. *This chapter modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b).*

Sec. 47. NRS 143.188 is hereby repealed.

