

IN THE SENATE

SENATE BILL NO. 1303

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT;
2 AMENDING TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 14, TITLE
3 15, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE
4 APPLICABILITY, TO PROVIDE FOR AN INDIVIDUAL'S DIRECTION FOR DISCLOSURE
5 OF DIGITAL ASSETS, TO PRESERVE RIGHTS IN A TERMS OF SERVICE AGREEMENT,
6 TO PROVIDE A PROCEDURE FOR DISCLOSING DIGITAL ASSETS, TO AUTHORIZE
7 DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS OF A DECEASED
8 USER, TO AUTHORIZE DISCLOSURE OF OTHER DIGITAL ASSETS OF A DECEASED
9 USER, TO AUTHORIZE DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICA-
10 TIONS OF A PRINCIPAL, TO AUTHORIZE DISCLOSURE OF OTHER DIGITAL ASSETS
11 OF A PRINCIPAL, TO AUTHORIZE DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST
12 WHEN A TRUSTEE IS THE ORIGINAL USER, TO AUTHORIZE DISCLOSURE OF CONTENT
13 OF ELECTRONIC COMMUNICATIONS HELD IN TRUST WHEN THE TRUSTEE IS NOT AN
14 ORIGINAL USER, TO AUTHORIZE DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN
15 TRUST WHEN A TRUSTEE IS NOT AN ORIGINAL USER, TO AUTHORIZE DISCLOSURE OF
16 DIGITAL ASSETS TO A CONSERVATOR OF A PROTECTED PERSON, TO PROVIDE FOR
17 FIDUCIARY DUTY AND AUTHORITY, TO PROVIDE FOR CUSTODIAN COMPLIANCE AND
18 IMMUNITY, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION,
19 TO PROVIDE FOR RELATION TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NA-
20 TIONAL COMMERCE ACT AND TO PROVIDE SEVERABILITY.
21

22 Be It Enacted by the Legislature of the State of Idaho:

23 SECTION 1. That Title 15, Idaho Code, be, and the same is hereby amended
24 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
25 ter 14, Title 15, Idaho Code, and to read as follows:

26 CHAPTER 14

27 REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

28 15-14-101. SHORT TITLE. This chapter shall be known and may be cited as
29 the "Revised Uniform Fiduciary Access to Digital Assets Act."

30 15-14-102. DEFINITIONS. As used in this chapter:

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

34 (2) "Agent" means an attorney in fact granted authority under a durable
35 or nondurable power of attorney.

36 (3) "Carries" means engages in the transmission of an electronic commu-
37 nication.

38 (4) "Catalog of electronic communications" means information that
39 identifies each person with which a user has had an electronic commu-

1 tion, the time and date of the communication and the electronic address of
2 the person.

3 (5) "Conservator" means a person appointed by a court to manage the es-
4 tate of a living individual. The term includes a limited conservator.

5 (6) "Content of an electronic communication" means information con-
6 cerning the substance or meaning of the communication that:

7 (a) Has been sent or received by a user;

8 (b) Is in electronic storage by a custodian providing an electronic
9 communication service to the public or is carried or maintained by a
10 custodian providing a remote computing service to the public; and

11 (c) Is not readily accessible to the public.

12 (7) "Court" means the court in this state having jurisdiction in mat-
13 ters relating to the content of this chapter.

14 (8) "Custodian" means a person that carries, maintains, processes, re-
15 ceives or stores a digital asset of a user.

16 (9) "Designated recipient" means a person chosen by a user using an on-
17 line tool to administer digital assets of the user.

18 (10) "Digital asset" means an electronic record in which an individual
19 has a right or interest. The term does not include an underlying asset or li-
20 ability unless the asset or liability is itself an electronic record.

21 (11) "Electronic" means relating to technology having electrical,
22 digital, magnetic, wireless, optical, electromagnetic or similar capabil-
23 ities.

24 (12) "Electronic communication" has the meaning set forth in 18 U.S.C.
25 2510(12).

26 (13) "Electronic communication service" means a custodian that pro-
27 vides to a user the ability to send or receive an electronic communication.

28 (14) "Fiduciary" means an original, additional or successor personal
29 representative, conservator, agent or trustee.

30 (15) "Information" means data, text, images, videos, sounds, codes,
31 computer programs, software, databases or the like.

32 (16) "Online tool" means an electronic service provided by a custodian
33 that allows the user, in an agreement distinct from the terms-of-service
34 agreement between the custodian and user, to provide directions for disclo-
35 sure or nondisclosure of digital assets to a third person.

36 (17) "Person" means an individual, estate, business or nonprofit en-
37 tity, public corporation, government or governmental subdivision, agency or
38 instrumentality, or other legal entity.

39 (18) "Personal representative" means an executor, administrator, spe-
40 cial administrator or person that performs substantially the same function
41 under the law of this state other than this chapter.

42 (19) "Power of attorney" means a record that grants an agent authority
43 to act in the place of a principal.

44 (20) "Principal" means an individual who grants authority to an agent in
45 a power of attorney.

46 (21) "Protected person" means an individual for whom a conservator has
47 been appointed. The term includes an individual for whom an application for
48 the appointment of a conservator is pending.

1 (22) "Record" means information that is inscribed on a tangible medium
2 or that is stored in an electronic or other medium and is retrievable in per-
3 ceivable form.

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

7 (24) "Terms of service agreement" means an agreement that controls the
8 relationship between a user and a custodian.

9 (25) "Trustee" means a fiduciary with legal title to property under an
10 agreement or declaration that creates a beneficial interest in another. The
11 term includes a successor trustee.

12 (26) "User" means a person that has an account with a custodian.

13 (27) "Will" includes a codicil, testamentary instrument that only ap-
14 points an executor and instrument that revokes or revises a testamentary in-
15 strument.

16 15-14-103. APPLICABILITY. (1) This chapter applies to:

17 (a) A fiduciary acting under a will or power of attorney executed be-
18 fore, on or after July 1, 2016;

19 (b) A personal representative acting for a decedent who died before, on
20 or after July 1, 2016;

21 (c) A conservatorship proceeding commenced before, on or after July 1,
22 2016; and

23 (d) A trustee acting under a trust created before, on or after July 1,
24 2016.

25 (2) This chapter applies to a custodian if the user resides in this
26 state or resided in this state at the time of the user's death.

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

29 15-14-104. USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS. (1) A user
30 may use an online tool to direct the custodian to disclose or not to disclose
31 some or all of the user's digital assets, including the content of electronic
32 communications. If the online tool allows the user to modify or delete a di-
33 rection at all times, a direction regarding disclosure using an online tool
34 overrides a contrary direction by the user in a will, trust, power of attor-
35 ney or other record.

36 (2) If a user has not used an online tool to give direction under subsec-
37 tion (1) of this section or if the custodian has not provided an online tool,
38 the user may allow or prohibit in a will, trust, power of attorney or other
39 record, the disclosure to a fiduciary of some or all of the user's digital as-
40 sets, including the content of electronic communications sent or received by
41 the user.

42 (3) A user's direction under subsection (1) or (2) of this section over-
43 rides a contrary provision in a terms of service agreement that does not re-
44 quire the user to act affirmatively and distinctly from the user's assent to
45 the terms of service.

1 15-14-105. TERMS OF SERVICE AGREEMENT. (1) This chapter does not
2 change or impair a right of a custodian or a user under a terms of service
3 agreement to access and use digital assets of the user.

4 (2) This chapter does not give a fiduciary any new or expanded rights
5 other than those held by the user for whom, or for whose estate, the fiduciary
6 acts or represents.

7 (3) A fiduciary's access to digital assets may be modified or elimi-
8 nated by a user, by federal law or by a terms of service agreement if the user
9 has not provided direction under section 15-14-104, Idaho Code.

10 15-14-106. PROCEDURE FOR DISCLOSING DIGITAL ASSETS. (1) When disclos-
11 ing the digital assets of a user under this chapter, the custodian may at its
12 sole discretion:

13 (a) Grant a fiduciary or designated recipient full access to the user's
14 account;

15 (b) Grant a fiduciary or designated recipient partial access to the
16 user's account sufficient to perform the tasks with which the fiduciary
17 or designated recipient is charged; or

18 (c) Provide a fiduciary or designated recipient with a copy in a record
19 of any digital asset that, on the date the custodian received the re-
20 quest for disclosure, the user could have accessed if the user were
21 alive and had full capacity and access to the account.

22 (2) A custodian may assess a reasonable administrative charge for the
23 cost of disclosing digital assets under this chapter.

24 (3) A custodian need not disclose a digital asset deleted by a user.

25 (4) If a user directs or a fiduciary requests a custodian to disclose
26 some, but not all, of the user's digital assets, the custodian need not dis-
27 close the assets if segregation of the assets would impose an undue burden on
28 the custodian. If the custodian believes the direction or request imposes an
29 undue burden, the custodian or the fiduciary may seek an order from the court
30 for an order to disclose:

31 (a) A subset limited by date of the user's digital assets;

32 (b) All of the user's digital assets to the fiduciary or designated re-
33 cipient;

34 (c) None of the user's digital assets; or

35 (d) All of the user's digital assets to the court for review in camera.

36 15-14-107. DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS OF
37 DECEASED USER. If a deceased user consented or a court directs disclosure of
38 the contents of electronic communications of the user, the custodian shall
39 disclose to the personal representative of the estate of the user the content
40 of an electronic communication sent or received by the user if the personal
41 representative gives the custodian:

42 (1) A written request for disclosure in physical or electronic form;

43 (2) A certified copy of the death certificate of the user;

44 (3) A certified copy of the letter of appointment of the personal repre-
45 sentative or a small estate affidavit or court order;

46 (4) Unless the user provided direction using an online tool, a copy of
47 the user's will, trust, power of attorney or other record evidencing the

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

3 (5) If requested by the custodian:

4 (a) A number, user name, address or other unique subscriber or account
5 identifier assigned by the custodian to identify the user's account;

6 (b) Evidence linking the account to the user; or

7 (c) A finding by the court that:

8 (i) The user had a specific account with the custodian, identifi-
9 able by the information specified in paragraph (a) of this subsec-
10 tion; or

11 (ii) Disclosure of the content of electronic communications of
12 the user would not violate 18 U.S.C. 2701 et seq., 47 U.S.C. 222,
13 or other applicable law;

14 (iii) Unless the user provided direction using an online tool, the
15 user consented to disclosure of the content of electronic communi-
16 cations; or

17 (iv) Disclosure of the content of electronic communications of
18 the user is reasonably necessary for the administration of the es-
19 tate.

20 15-14-108. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED USER. Un-
21 less the user prohibited disclosure of digital assets or the court directs
22 otherwise, a custodian shall disclose to the personal representative of the
23 estate of a deceased user a catalog of electronic communications sent or
24 received by the user and digital assets, other than the content of electronic
25 communications, of the user, if the personal representative gives to the
26 custodian:

27 (1) A written request for disclosure in physical or electronic form;

28 (2) A certified copy of the death certificate of the user;

29 (3) A certified copy of the letter of appointment of the representative
30 or a small estate affidavit or court order; and

31 (4) If requested by the custodian:

32 (a) A number, user name, address or other unique subscriber or account
33 identifier assigned by the custodian to identify the user's account;

34 (b) Evidence linking the account to the user;

35 (c) An affidavit stating that disclosure of the user's digital assets
36 is reasonably necessary for the administration of the estate; or

37 (d) A finding by the court that:

38 (i) The user had a specific account with the custodian, identifi-
39 able by the information specified in paragraph (a) of this subsec-
40 tion; or

41 (ii) Disclosure of the user's digital assets is reasonably neces-
42 sary for the administration of the estate.

43 15-14-109. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF
44 PRINCIPAL. To the extent a power of attorney expressly grants an agent au-
45 thority over the content of electronic communications sent or received by
46 the principal and unless directed otherwise by the principal or the court, a
47 custodian shall disclose to the agent the content of an electronic communi-
48 cation sent or received by the principal if the agent gives to the custodian:

- 1 (1) A written request for disclosure in physical or electronic form;
- 2 (2) An original or copy of the power of attorney expressly granting the
3 agent authority over the content of electronic communications of the princi-
4 pal;
- 5 (3) A certification by the agent, under penalty of perjury, that the
6 power of attorney is in effect; and
- 7 (4) If requested by the custodian:
 - 8 (a) A number, user name, address or other unique subscriber or account
9 identifier assigned by the custodian to identify the principal's ac-
10 count; or
 - 11 (b) Evidence linking the account to the principal.

12 15-14-110. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL. Unless
13 otherwise ordered by the court, directed by the principal or provided by
14 a power of attorney, a custodian shall disclose to an agent with specific
15 authority over digital assets or general authority to act on behalf of the
16 principal a catalog of electronic communications sent or received by the
17 principal and digital assets of the principal, other than the content of
18 electronic communications, if the agent gives to the custodian:

- 19 (1) A written request for disclosure in physical or electronic form;
- 20 (2) An original or a copy of the power of attorney that gives the agent
21 specific authority over digital assets or general authority to act on behalf
22 of the principal;
- 23 (3) A certification by the agent, under penalty of perjury, that the
24 power of attorney is in effect; and
- 25 (4) If requested by the custodian:
 - 26 (a) A number, user name, address or other unique subscriber or account
27 identifier assigned by the custodian to identify the principal's ac-
28 count; or
 - 29 (b) Evidence linking the account to the principal.

30 15-14-111. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS
31 ORIGINAL USER. Unless otherwise ordered by the court or provided in a trust,
32 a custodian shall disclose to a trustee that is an original user of an ac-
33 count any digital asset of the account held in trust, including any catalog
34 of electronic communications of the trustee and the content of electronic
35 communications.

36 15-14-112. DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD
37 IN TRUST WHEN TRUSTEE IS NOT ORIGINAL USER. Unless otherwise ordered by the
38 court, directed by the user or provided in a trust, a custodian shall dis-
39 close to a trustee that is not an original user of the account the content
40 of an electronic communication sent or received by an original or successor
41 user and carried, maintained, processed, received or stored by the custodian
42 in the account of the trust if the trustee gives to the custodian:

- 43 (1) A written request for disclosure in physical or electronic form;
- 44 (2) A certified copy of the trust instrument or a certification of the
45 trust under chapter 1, title 68, Idaho Code, that includes consent to disclo-
46 sure of the content of electronic communications to the trustee;

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

4 (4) If requested by the custodian:

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

8 (b) Evidence linking the account to the trust.

9 15-14-113. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN
10 TRUSTEE IS NOT ORIGINAL USER. Unless otherwise ordered by the court, di-
11 rected by the user, or provided in a trust, a custodian shall disclose to a
12 trustee that is not an original user of an account a catalog of electronic
13 communications sent or received by an original or successor user and stored,
14 carried or maintained by the custodian in an account of the trust and any dig-
15 ital assets in which the trust has a right or interest, other than the content
16 of electronic communications, if the trustee gives to the custodian:

17 (1) A written request for disclosure in physical or electronic form;

18 (2) A certified copy of the trust instrument or a certification of the
19 trust under chapter 1, title 68, Idaho Code;

20 (3) A certification by the trustee, under penalty of perjury, that the
21 trust exists and that the trustee is a currently acting trustee of the trust;
22 and

23 (4) If requested by the custodian:

24 (a) A number, user name, address or other unique subscriber or account
25 identifier assigned by the custodian to identify the trust's account;
26 or

27 (b) Evidence linking the account to the trust.

28 15-14-114. DISCLOSURE OF DIGITAL ASSETS TO CONSERVATOR OF PROTECTED
29 PERSON. (1) The court, after an opportunity for a hearing under part 4, chap-
30 ter 5, title 15, Idaho Code, may grant a conservator the right to access a
31 protected person's digital assets.

32 (2) Unless otherwise ordered by the court or directed by the user, a
33 custodian shall disclose to a conservator the catalog of electronic commu-
34 nications sent or received by the protected person and any digital assets in
35 which the protected person has a right or interest, other than the content of
36 electronic communications, if the conservator gives to the custodian:

37 (a) A written request for disclosure in physical or electronic form;

38 (b) A certified copy of the court order that gives the conservator au-
39 thority over the protected person's digital assets; and

40 (c) If requested by the custodian:

41 (i) A number, user name, address or other unique subscriber or
42 account identifier assigned by the custodian to identify the pro-
43 tected person's account; or

44 (ii) Evidence linking the account to the protected person.

45 (3) A conservator with general authority to manage the assets of a
46 protected person may request a custodian of the protected person's digital
47 assets to suspend or terminate an account of the protected person for good
48 cause. A request made under this section must be accompanied by a certified

1 copy of the court order giving the conservator authority over the protected
2 person's property.

3 15-14-115. FIDUCIARY DUTY AND AUTHORITY. (1) The legal duties imposed
4 on a fiduciary charged with managing tangible personal property apply to the
5 management of digital assets, including:

- 6 (a) The duty of care;
7 (b) The duty of loyalty; and
8 (c) The duty of confidentiality.

9 (2) A fiduciary's authority with respect to a digital asset of a user:

10 (a) Is subject to the applicable terms of service agreement governing
11 the account, except as otherwise provided in section 15-14-104, Idaho
12 Code;

13 (b) Is subject to other applicable laws, including copyright law;

14 (c) Is limited by the scope of the fiduciary's duties; and

15 (d) May not be used to impersonate the user.

16 (3) A fiduciary with authority over the property of a decedent, pro-
17 tected person, principal or settlor has the right to access any digital asset
18 in which the decedent, protected person, principal or settlor had a right or
19 interest and that is not held by a custodian or subject to a terms of service
20 agreement.

21 (4) A fiduciary acting within the scope of the fiduciary's duties is an
22 authorized user of the property of the decedent, protected person, princi-
23 pal or settlor for the purpose of applicable computer fraud and unauthorized
24 computer access laws, including section 18-2202, Idaho Code.

25 (5) A fiduciary with authority over the tangible personal property of a
26 decedent, protected person, principal or settlor:

27 (a) Has the right to access the property and any digital asset stored in
28 it; and

29 (b) Is an authorized user for the purpose of computer fraud and unautho-
30 rized computer access laws, including section 18-2202, Idaho Code.

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

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

37 (a) If the user is deceased, a certified copy of the death certificate
38 of the user;

39 (b) A certified copy of the letter of appointment of the personal repre-
40 sentative or a small estate affidavit, court order, power of attorney or
41 trust giving the fiduciary authority over the account; and

42 (c) If requested by the custodian:

43 (i) A number, user name, address or other unique subscriber or ac-
44 count identifier assigned by the custodian to identify the user's
45 account;

46 (ii) Evidence linking the account to the user; or

47 (iii) An order of the court finding that the user had a specific ac-
48 count with the custodian, identifiable by the information speci-
49 fied in subparagraph (i) of this paragraph.

1 15-14-116. CUSTODIAN COMPLIANCE AND IMMUNITY. (1) Not later than
2 sixty (60) days after receipt of the information required under sections
3 15-14-107 through 15-14-114, Idaho Code, a custodian shall comply with a
4 request under this chapter from a fiduciary or designated recipient to dis-
5 close digital assets or to terminate an account. If the custodian fails to
6 comply, the fiduciary or designated recipient may apply to the court for an
7 order directing compliance.

8 (2) An order directing compliance must contain a finding that compli-
9 ance is not in violation of 18 U.S.C. 2702.

10 (3) A custodian may notify the user that a request for disclosure of
11 digital assets or account termination was made pursuant to this chapter.

12 (4) A custodian may deny a request under this chapter from a fiduciary
13 or designated recipient for disclosure of digital assets or account termina-
14 tion if the custodian is aware of any lawful access to the account following
15 the receipt of the fiduciary's request.

16 (5) This chapter does not limit a custodian's ability to obtain or to
17 require a fiduciary or designated recipient requesting disclosure or termi-
18 nation to obtain a court order which:

19 (a) Specifies that an account belongs to the protected person or prin-
20 cipal;

21 (b) Specifies that there is sufficient consent from the protected per-
22 son or principal to support the requested disclosure; and

23 (c) Contains a finding required by any other applicable law.

24 (6) A custodian and its officers, employees and agents are immune from
25 liability for an act or omission done reasonably and in good faith compliance
26 with this chapter.

27 15-14-117. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying
28 and construing this uniform act, consideration must be given to the need to
29 promote uniformity of the law with respect to its subject matter among states
30 that enact it.

31 15-14-118. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
32 COMMERCE ACT. This chapter modifies, limits or supersedes the electronic
33 signatures in global and national commerce act, 15 U.S.C. 7001 et seq., but
34 does not modify, limit or supersede section 101(c) of that act, 15 U.S.C.
35 7001(c), or authorize electronic delivery of any of the notices described in
36 section 103(b) of that act, 15 U.S.C. 7003(b).

37 15-14-119. SEVERABILITY. If any provision of this act or its applica-
38 tion to any person or circumstance is held invalid, the invalidity does not
39 affect other provisions or applications of this act that can be given effect
40 without the invalid provision or application, and to this end the provisions
41 of this act are severable.