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**An Act To Enact the Recommendations of the Probate  
and Trust Law Advisory Commission Regarding the  
Maine Uniform Fiduciary Access to Digital Assets Act**

**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 UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

**§ 10-101. Short title**

This Act may be known and cited as "the Maine 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.

**(a).** "Account holder" means a person that has entered into a terms of service agreement with a custodian or a fiduciary for the person.

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

**(c).** "Carries" means engages in the transmission of electronic communications.

**(d).** "Catalogue of electronic communications" means information that identifies each person with which an account holder has had an electronic communication, the time and date of the communication and the electronic address of the person.

**(e).** "Conservator" means a person appointed by a court to manage the estate of a living individual. The term includes a limited conservator.

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

**(1).** Has been sent or received by an account holder;

(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.

(g). "Court" means any one of the several courts of probate of this State established as provided in Title 4, sections 201 and 202.

(h). "Custodian" means a person that carries, maintains, processes, receives or stores a digital asset of an account holder.

(i). "Digital asset" means a record that is electronic. The term does not include an underlying asset or liability unless the asset or liability is itself a record that is electronic.

(j). "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

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

(l). "Electronic communication service" means a custodian that provides to an account holder the ability to send or receive an electronic communication.

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

(n). "Governing instrument" means a will, trust, instrument creating a power of attorney or other dispositive or nominative instrument.

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

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

(q). "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.

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

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

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

(u). "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.

(v). "Remote computing service" means a custodian that provides to an account holder 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).

(w). "Terms of service agreement" means an agreement that controls the relationship between an account holder and a custodian.

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

(y). "Will" includes a codicil, testamentary instrument that only appoints an executor and instrument that revokes or revises a testamentary instrument.

### **§ 10-103. Applicability**

(a). This Act applies to:

(1). A fiduciary or agent acting under a will or power of attorney executed before, on or after January 1, 2016;

(2). A personal representative acting for a decedent who died before, on or after January 1, 2016;

(3). A conservatorship proceeding, whether pending in a court or commenced before, on or after January 1, 2016; and

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

(b). 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. Access by personal representative to digital asset of decedent**

Subject to section 10-108, subsection (b) and unless otherwise ordered by the court or provided in the will of a decedent, the personal representative of the decedent has the right to access:

(a). The content of an electronic communication that the custodian is permitted to disclose under the Electronic Communications Privacy Act, 18 United States Code, Section 2702(b);

(b). Any catalogue of electronic communications sent or received by the decedent; and

(c). Any other digital asset in which at death the decedent had a right or interest.

### **§ 10-105. Access by conservator to digital asset of protected person**

Subject to section 10-108, subsection (b), the court, after an opportunity for hearing under Article 5, Part 4, may grant a conservator the right to access:

- (a). The content of an electronic communication that the custodian is permitted to disclose under the Electronic Communications Privacy Act, 18 United States Code, Section 2702(b);
- (b). Any catalogue of electronic communications sent or received by the protected person; and
- (c). Any other digital asset in which the protected person has a right or interest.

### **§ 10-106. Access by agent to digital asset of principal**

(a). To the extent a power of attorney expressly grants an agent authority over the content of an electronic communication of the principal and subject to section 10-108, subsection (b), the agent has the right to access the content of an electronic communication that the custodian is permitted to disclose under the Electronic Communications Privacy Act, 18 United States Code, Section 2702(b).

(b). Subject to section 10-108, subsection (b) and unless otherwise ordered by the court or provided by a power of attorney, an agent has the right to access:

- (1). Any catalogue of electronic communications sent or received by the principal; and
- (2). Any other digital asset in which the principal has a right or interest.

### **§ 10-107. Access by trustee to digital asset**

(a). Subject to section 10-108, subsection (b) and unless otherwise ordered by the court or provided in a trust, a trustee that is an original account holder has the right to access any digital asset held in trust, including any catalogue of electronic communications of the trustee and the content of an electronic communication.

(b). Subject to 10-108, subsection (b) and unless otherwise ordered by the court or provided in a trust, a trustee that is not an original account holder has the right to access:

- (1). The content of an electronic communication that the custodian is permitted to disclose under the Electronic Communications Privacy Act, 18 United States Code, Section 2702(b);
- (2). Any catalogue of electronic communications sent or received by the original or any successor account holder; and
- (3). Any other digital asset in which the original or any successor account holder has a right or interest.

### **§ 10-108. Fiduciary authority**

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

(1). Subject to the terms of service agreement, copyright law and other applicable law, may take any action concerning the asset to the extent of the account holder's authority and the fiduciary's power under the law of this State other than this Act;

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

(3). Is, for the purpose of applicable computer fraud and unauthorized computer access laws, including Title 17-A, chapter 18, an authorized user.

**(b).** Unless an account holder, after January 1, 2016, agrees to a provision in a terms of service agreement that limits a fiduciary's access to a digital asset of the account holder by an affirmative act separate from the account holder's assent to other provisions of the agreement:

(1). The provision is void as against the strong public policy of this State; and

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

**(c).** A choice of law provision in a terms of service agreement is unenforceable against a fiduciary acting under this Act to the extent the provision designates law that enforces a limitation on a fiduciary's access to a digital asset, and the limitation is void under subsection (b).

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

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

(2). Is an authorized user for purposes of any applicable computer fraud and unauthorized computer access laws, including Title 17-A, chapter 18.

## **§ 10-109. Compliance**

**(a).** If a fiduciary with a right under this Act to access a digital asset of an account holder complies with subsection (b), the custodian shall comply with the fiduciary's request in a record for:

(1). Access to the asset;

(2). Control of the asset; and

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

**(b).** If a request under subsection (a) is made by:

(1). A personal representative with the right of access under section 10-104, the request must be accompanied by a certified copy of the letters of authority of the representative or a court order;

(2). A conservator with the right of access under section 10-105, the request must be accompanied by a certified copy of the court order that gives the conservator authority over the digital asset;

(3). An agent with the right of access under section 10-106, the request must be accompanied by an original or a copy of the power of attorney that authorizes the agent to exercise authority over the digital asset and a certification of the agent, under penalty of perjury, that the power of attorney is in effect; and

(4). A trustee with the right of access under section 10-107, the request must be accompanied by a certified copy of the trust instrument, or a certification of the trust under Title 18-B, section 1013, that authorizes the trustee to exercise authority over the digital asset.

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

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

### **§ 10-110. Custodian 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.

### **§ 10-111. Uniformity of application and construction**

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.

### **§ 10-112. Relation to Electronic Signatures in Global and National Commerce Act**

This Act modifies, limits or supersedes the 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 §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-2. 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 Uniform Fiduciary Access to Digital Assets Act.

## **PART C**

**Sec. C-1. Effective date.** This Act takes effect January 1, 2016.

### **SUMMARY**

This bill enacts the Uniform Fiduciary Access to Digital Assets Act as the Maine Uniform Fiduciary Access to Digital Assets Act as a new Article 10 in the Maine Revised Statutes, Title 18-A. The Probate and Trust Law Advisory Commission recommended enactment in the report submitted to the Joint Standing Committee on Judiciary pursuant to Resolve 2013, chapter 27 as amended by Resolve 2013, chapter 81.

The Prefatory Note and accompanying Comments to the Uniform Fiduciary Access to Digital Assets Act provide a summary and explanation of the Uniform Fiduciary Access to Digital Assets Act. The Uniform Fiduciary Access to Digital Assets Act provides an important update for the Internet age. A generation ago, files were stored in cabinets, photos were stored in albums and mail was delivered by a human being. Today, people are more likely to use the Internet to communicate and store information. The Uniform Fiduciary Access to Digital Assets Act ensures account holders retain control of their digital property and can plan for its ultimate disposition after their death. Unless the account holder instructs otherwise, legally appointed fiduciaries will have the same access to digital assets as they have always had to tangible assets and the same duty to comply with the account holder's instructions.

This bill modifies the Uniform Fiduciary Access to Digital Assets Act to be consistent with existing Maine law with regard to conservators. Part B amends Maine's Uniform Power of Attorney Act to specifically allow a power of attorney to grant authority to enable the agent to access the content of an electronic communication to be consistent with the grant of express authority required by Section 6 of the Uniform Fiduciary Access to Digital Assets Act, included in this bill as the Maine Revised Statutes, Title 18-A, section 10-106.

Part C provides that this bill takes effect January 1, 2016.