

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend Title 21 of the District of Columbia Official Code to enact the Revised Uniform Fiduciary Access to Digital Assets Act to allow holders of accounts with digital assets to give access to these accounts to fiduciaries, including executors, agents, conservators, and trustees, to provide default rules governing access by fiduciaries to these accounts, and to provide immunity from liability for custodians of accounts that comply with a fiduciary's apparent authorized request for access.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Uniform Fiduciary Access to Digital Assets Act of 2020".

Sec. 2. Title 21 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new chapter heading to read as follows: "25. Uniform Fiduciary Access to Digital Assets Act."

(b) A new Chapter 25 is added to read as follows:

"CHAPTER 25. UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.

"Section

"21-2501. Short title.

"21-2502. Definitions.

"21-2503. Applicability.

"21-2504. User direction for disclosure of digital assets.

"21-2505. Terms-of-service agreement.

"21-2506. Procedure for disclosing digital assets.

"21-2507. Disclosure of contents of electronic communications of deceased user.

"21-2508. Disclosure of other digital assets of deceased user.

"21-2509. Disclosure of contents of electronic communications of principal.

"21-2510. Disclosure of other digital assets of principal.

"21-2511. Disclosure of digital assets held in trust when trustee is original user.

"21-2512. Disclosure of contents of electronic communications held in trust when trustee not original user.

"21-2513. Disclosure of other digital assets held in trust when trustee not original user.

"21-2514. Disclosure of digital assets to conservator of protected individual.

"21-2515. Fiduciary duty and authority.

“21-2516. Custodian compliance and immunity.

“21-2517. Uniformity of application and construction.

“21-2518. Relation to Electronic Signatures in Global and National Commerce Act.

“§ 21-2501. Short title.

“This chapter may be cited as the “Uniform Fiduciary Access to Digital Assets Act of 2020”.

“§ 21-2502. Definitions.

“For the purposes of this chapter, the term:

“(1) “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.

“(2) “Agent” means an attorney-in-fact granted authority under a durable or nondurable power of attorney.

“(3) “Carries” means engages in the transmission of an electronic communication.

“(4) “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. The term “catalogue of electronic communications” does not include the content of an electronic communication.

“(5) “Conservator” means a person appointed by a court to manage the estate of a living individual. The term “conservator” includes a limited conservator.

“(6) “Content of an electronic communication” means information concerning the substance or meaning of the 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” means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

“(8) “Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user.

“(9) “Digital asset” means an electronic record in which an individual has a right or interest. The term “digital asset” does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

“(10) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“(11) “Electronic communication” shall have the same meaning as provided in 18 U.S.C. § 2510(12).

“(12) “Electronic communication service” means a custodian that provides to a user the ability to send or receive an electronic communication.

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“(13) “Fiduciary” means an original, additional, or successor personal representative, conservator, agent, or trustee. The term “fiduciary” includes a person who receives money for an individual as a guardian pursuant to § 21-2047(b)(1).

“(14) “Information” means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

“(15) “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.

“(16) “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” means an executor, administrator, special administrator, or person that performs substantially the same function under laws of the District of Columbia other than this chapter.

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

“(19) “Principal” means an individual who grants authority to an agent in a power of attorney.

“(20) “Protected individual” means an individual for whom a conservator has been appointed. The term “protected individual” includes an individual for whom an application for the appointment of a conservator is pending.

“(21) “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” 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 that term is defined in 18 U.S.C. § 2510(14).

“(23) “Superior Court” means the Superior Court of the District of Columbia.

“(24) “Terms-of-service agreement” means an agreement that controls the relationship between a user and a custodian.

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

“(26) “User” means a person that has an account with a custodian.

“(27) “Will” includes a codicil, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.

“§ 21-2503. Applicability.

“(a) This chapter applies to:

“(1) A fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this chapter;

“(2) A personal representative acting for a decedent who died before, on, or after the effective date of this chapter;

“(3) A conservatorship proceeding commenced before, on, or after the effective date of this chapter; and

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

“(b) This chapter applies to a custodian if the user resides in the District or resided in the District at the time of the user’s death.

“(c) 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.

“§ 21-2504. User direction for disclosure of digital assets.

“(a) A user may use an online tool to direct a custodian to disclose or not to disclose to a designated recipient 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.

“(b) If a user has not used an online tool to give direction under subsection (a) of this section, 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.

“(c) A user’s direction under subsection (a) or (b) of this section 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.

“§ 21-2505. Terms-of-service agreement.

“(a) 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.

“(b) 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.

“(c) 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 pursuant to § 21-2504.

“§ 21-2506. Procedure for disclosing digital assets.

“(a) When disclosing digital assets of a user under this chapter, the custodian may at its sole discretion:

“(1) Grant a fiduciary or designated recipient full access to the user’s account;

“(2) 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

“(3) 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.

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

“(c) A custodian may decline to disclose under this chapter a digital asset deleted by a user.

“(d) 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 may decline to 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 Superior Court to disclose:

“(1) A subset limited by date of the user’s digital assets;

“(2) All of the user’s digital assets to the fiduciary or designated recipient;

“(3) None of the user’s digital assets; or

“(4) All of the user’s digital assets to the Superior Court for review in camera.

“§ 21-2507. Disclosure of contents of electronic communications of deceased user.

“If a deceased user consented or, in the absence of direction pursuant to § 21-2504, the Superior 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 letter of appointment of the representative or a small-estate affidavit or court order;

“(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 Superior Court that:

“(i) The user had a specific account with the custodian, identifiable by the information specified in subparagraph (A) of this paragraph;

“(ii) Disclosure of the content of electronic communications of the user would not violate 18 U.S.C. § 2701 *et seq.*, 47 U.S.C. § 222, or other applicable laws;

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

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

“§ 21-2508. Disclosure of other digital assets of deceased user.

“Unless the user prohibited disclosure of digital assets or the Superior 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 the letter of appointment of the representative or a small-estate affidavit or court order; 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 Superior Court that:

“(i) The user had a specific account with the custodian, identifiable by the information specified in subparagraph (A) of this paragraph; or

“(ii) Disclosure of the user’s digital assets is reasonably necessary for administration of the estate.

“§ 21-2509. 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 Superior Court, a custodian shall disclose to the agent the content of electronic communications sent or received by the principal 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.

“§ 21-2510. Disclosure of other digital assets of principal.

“Unless otherwise ordered by the Superior 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.

“§ 21-2511. Disclosure of digital assets held in trust when trustee is original user.

“Unless otherwise ordered by the Superior 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.

“§ 21-2512. Disclosure of contents of electronic communications held in trust when trustee not original user.

“Unless otherwise ordered by the Superior 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 the trust pursuant to § 19-1310.13 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.

“§ 21-2513. Disclosure of other digital assets held in trust when trustee not original user.

“Unless otherwise ordered by the Superior 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 the trust under § 19-1310.13;

“(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.

“§ 21-2514. Disclosure of digital assets to conservator of protected individual.

“(a) After an opportunity for a hearing under § 21-2054, the Superior Court may grant a conservator access to the digital assets of a protected individual.

“(b) Unless otherwise ordered by the Superior Court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a protected individual and any digital assets, other than the content of electronic communications, in which the protected individual has a right or interest if the conservator gives the custodian:

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

“(2) A certified copy of the court order that gives the conservator authority over the digital assets of the protected individual; and

“(3) If requested by the custodian:

“(A) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected individual; or

“(B) Evidence linking the account to the protected individual.

“(c) A conservator with general authority to manage the assets of a protected individual may request a custodian of the digital assets of the protected individual to suspend or terminate an account of the protected individual for good cause. A request made under this section shall be accompanied by a certified copy of the court order giving the conservator authority over the protected individual’s property.

“§ 21-2515. Fiduciary duty and authority.

“(a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

“(1) The duty of care;

“(2) The duty of loyalty; and

“(3) The duty of confidentiality.

“(b) A fiduciary’s or designated recipient’s authority with respect to a digital asset of a user:

“(1) Except as otherwise provided in § 21-2504, is subject to the applicable terms of service;

“(2) Is subject to other applicable law, including copyright law;

“(3) In the case of a fiduciary, is limited by the scope of the fiduciary’s duties;

and

“(4) Shall not be used to impersonate the user.

“(c) A fiduciary with authority over the property of a decedent, protected individual, principal, or settlor may access any digital asset in which the decedent, protected individual, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.



“(d) A fiduciary acting within the scope of the fiduciary’s duties is an authorized user of the property of the decedent, protected individual, principal, or settlor for the purpose of, applicable federal or District computer-fraud and unauthorized-computer-access laws.

“(e) A fiduciary with authority over the tangible, personal property of a decedent, protected individual, principal, or settlor:

“(1) May access the property and any digital asset stored in it; and

“(2) Is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws.

“(f) 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.

“(g) 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:

“(1) If the user is deceased, a certified copy of the death certificate of the user;

“(2) A certified copy of the letter of appointment of the representative or a small-estate affidavit or court order, power of attorney, or trust giving the fiduciary authority over the account; and

“(3) 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 Superior Court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A) of this paragraph.

“§ 21-2516. Custodian compliance and immunity.

“(a) Not later than 60 days after receipt of the information required under §§ 21-2507 through 21-2514, 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 Superior Court for an order directing compliance.

“(b) An order under subsection (a) of this section directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. § 2702.

“(c) Unless a custodian has been notified that a user is deceased, the custodian shall notify the user that a request for disclosure or to terminate an account was made under this chapter.

“(d) 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.

“(e) 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 that:

“(1) Specifies that an account belongs to the protected individual or principal;

“(2) Specifies that there is sufficient consent from the protected individual or principal to support the requested disclosure; and

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

“(f) 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.

“§ 21-2517. 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.

“§ 21-2518. Relation to Electronic Signatures in Global and National Commerce Act.

“This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (.114 Stat. 464; 15 U.S.C. § 7001 *et seq.*) (“ESGNCA”), but does not modify, limit, or supersede section 101(c) of the ESGNCA, or authorize electronic delivery of any of the notices described in section 103(b) the ESGNCA.”.

### Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

### Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia