

SENATE BILL 2077

By Norris

AN ACT to amend Tennessee Code Annotated, Title 30; Title 31; Title 32; Title 34 and Title 35, relative to electronically stored assets.

WHEREAS, this General Assembly recognizes that an increasing number of persons and businesses communicate by email or social networking sites, bank electronically, and have electronically accessed credit; and

WHEREAS, there exists value in some electronically stored assets such as the content of a financial account, online photographs, and internet domain names; and

WHEREAS, at the death or incapacitation of the owner of such electronically stored assets and accounts, the fiduciary, such as a personal representative, attorney-in-fact, or trustee, may not be aware of all of such assets or accounts, may not have the username, password or other means of accessing such assets or accounts, and may find his or her authority under current state law to access, control or transfer such assets or accounts unclear; and

WHEREAS, this body takes notice that electronic communication and storage has developed independently of the historical definition of "property" in the Tennessee Code Annotated; and

WHEREAS, this General Assembly finds that a mechanism is necessary to afford discretionary power to fiduciaries to access electronically stored assets to ensure a person's assets and property rights in the digital realm are adequately protected; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Digital Asset Protection Act of 2014".

SECTION 2. Tennessee Code Annotated, Title 30, Chapter 1, Part 1, is amended by adding the following as new, appropriately designated sections:

30-1-118.

Except as limited by the express terms of a will of a decedent or a court order, a personal representative of an estate of the decedent may access, take control of, handle, conduct, continue, distribute, dispose of, or terminate any digital assets, as defined in § 31-1-101, and digital accounts, as defined in § 31-1-101, owned by the decedent at death.

30-1-119.

(a) A digital records custodian shall provide to a personal representative access to any digital accounts of the decedent operated by the custodian and copies of any digital assets of the decedent stored by the custodian, upon receipt by the custodian of:

(1) A written request for access to digital accounts and digital assets made by the personal representative, accompanied by a copy of the death certificate and a copy of the personal representative's letters testamentary or letters of administration; or

(2) An order of a court having jurisdiction over the decedent's estate or any order issued by any court that is a court of competent jurisdiction.

(b) A digital records custodian shall not destroy, disable, or dispose of any digital account or digital asset of the decedent for two (2) years after the custodian receives a request or order under subsection (a), unless directed to do so by the personal representative.

(c) Nothing in this section shall be construed to require a digital records custodian to disclose or grant access to:

(1) Any digital asset or digital account in violation of any applicable federal law; or

(2) Any digital asset or digital account to which the decedent would not have been permitted access in the ordinary course of business by the custodian.

(d) No cause of action shall lie in any court against any digital records custodian, its officers, employees, agents, or other specified persons for providing digital assets or digital accounts in accordance with this section.

SECTION 3. Tennessee Code Annotated, Section 31-1-101, is amended by adding the following as new, appropriately designated subdivisions:

() "Digital accounts" means any electronic or online account, including email accounts, Internet-based or cloud-based accounts, software licenses, social network accounts, social media accounts, file sharing accounts, financial management accounts, domain registration accounts, domain name service accounts, web hosting accounts, tax preparation service accounts, online stores, and affiliate programs;

() "Digital assets" means any electronic content or files stored on digital devices regardless of the ownership of the physical device upon which the digital asset is stored. "Digital assets" includes emails, documents, images, still photographs, blogs, video blogs, podcasts, instant and text messages, audio files, and videos;

() "Digital devices" means any devices that use electronic signals to create, transmit, store, or receive information. "Digital devices" includes desktops, laptops, tablets, peripherals, storage devices, mobile telephones, and smartphones; and

() "Digital records custodian" means any person or entity who electronically stores the digital assets of another person or who operates the digital accounts of another person;

SECTION 4. Tennessee Code Annotated, Section 31-1-101(9), is amended by deleting the language "includes both real and personal property" and by substituting instead the language "includes real property, personal property, digital accounts, and digital assets,".

SECTION 5. Tennessee Code Annotated, Section 35-12-102(6), is amended by deleting the language "includes both real and personal property" and by substituting instead the language "includes both real and personal property and digital accounts and digital assets as defined in § 31-1-101,".

SECTION 6. Tennessee Code Annotated, Section 35-15-103(23), is amended by deleting the language "whether real or personal, legal or equitable," and by substituting instead the language "whether real or personal, legal or equitable, including digital assets and digital accounts as defined in § 31-1-101,".

SECTION 7. Tennessee Code Annotated, Section 35-16-102(9), is amended by deleting the language "real property, personal property, and interests in real or personal property" and by substituting instead the language "real property, personal property, digital assets and digital accounts as defined in § 31-1-101, and interests in real property, personal property, digital assets or digital accounts".

SECTION 8. Tennessee Code Annotated, Section 35-15-816(b), is amended by adding the following as a new subdivision (26) and by renumbering existing subdivisions (26) and (27) accordingly:

(26) Access, take control of, handle, conduct, continue, distribute, dispose of, or terminate any digital assets, as defined in § 31-1-101, and digital accounts, as defined in § 31-1-101, held as part of the trust property or received as trust property from a settlor or any other person;

SECTION 9. Tennessee Code Annotated, Title 35, Chapter 15, Part 8, is amended by adding the following as a new section:

35-15-818.

(a) A digital records custodian as defined in § 31-1-101 shall provide a trustee access to any digital accounts of the decedent or settlor operated by the custodian and

copies of any digital assets of the decedent or settlor stored by the custodian, upon receipt by the custodian of:

(1) A written request for access to digital accounts and digital assets made by the trustee, accompanied by a copy of the instrument creating the fiduciary relationship or certification thereof; or

(2) An order of a court having jurisdiction over the estate or trust involved or any order issued by any court that is a court of competent jurisdiction.

(b) A digital records custodian shall not destroy, disable, or dispose of any digital account or digital asset for two (2) years after the custodian receives a request or order under subsection (a), unless directed to do so by the trustee.

(c) Nothing in this section shall be construed to require a custodian to disclose or grant access to:

(1) Any digital asset or digital account in violation of any applicable federal law; or

(2) Any digital asset or digital account to which the decedent or the settlor would not have been permitted access in the ordinary course of business by the custodian.

(d) No cause of action shall lie in any court against any digital records custodian, its officers, employees, agents, or other specified persons for providing digital assets or digital accounts in accordance with this section.

SECTION 10. Tennessee Code Annotated, Title 35, Chapter 2, is amended by adding the following as a new section:

35-2-113.

(a) A digital records custodian as defined in § 31-1-101 shall provide a fiduciary access to any digital accounts of the decedent or settlor operated by the custodian and

copies of any digital assets of the decedent or settlor stored by the custodian, upon receipt by the custodian of:

(1) A written request for access to digital accounts and digital assets made by the fiduciary, accompanied by a copy of the instrument creating the fiduciary relationship or certification thereof; or

(2) An order of a court having jurisdiction over the estate or trust involved or any order issued by any court that is a court of competent jurisdiction.

(b) A digital records custodian shall not destroy, disable, or dispose of any digital account or digital asset for two (2) years after the custodian receives a request or order under subsection (a), unless directed to do so by the fiduciary.

(c) Nothing in this section shall be construed to require a custodian to disclose or grant access to:

(1) Any digital asset or digital account in violation of any applicable federal law; or

(2) Any digital asset or digital account to which the decedent or the settlor would not have been permitted access in the ordinary course of business by the custodian.

(d) No cause of action shall lie in any court against any digital records custodian, its officers, employees, agents, or other specified persons for providing digital assets or digital accounts in accordance with this section.

SECTION 11. Tennessee Code Annotated, Title 34, Chapter 6, is amended by adding the following as a new part 4:

34-6-401.

Except as limited by the express terms of a power of attorney, an attorney-in-fact under a power of attorney may access, take control of, handle, conduct, continue,

distribute, dispose of, or terminate any digital assets, as defined in § 31-1-101 and digital accounts, as defined in § 31-1-101, which the principal owns at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as the attorney-in-fact shall deem proper.

34-6-402.

(a) A digital records custodian shall provide an attorney-in-fact access to any digital accounts operated by the custodian and copies of any digital assets stored by the custodian that the principal owns at the time of execution or may thereafter acquire. A digital records custodian shall provide access to the digital accounts and copies of the digital assets upon receipt by the custodian of:

(1) A written request for access to digital accounts and digital assets made by the attorney-in-fact, accompanied by a copy of the power of attorney; or

(2) An order of a court having jurisdiction over the power of attorney or any order issued by any court that is a court of competent jurisdiction.

(b) A digital records custodian shall not destroy, disable, or dispose of any digital account or digital asset for two (2) years after the custodian receives a request or order under subsection (a), unless directed to do so by the attorney-in-fact.

(c) Nothing in this section shall be construed to require a custodian to disclose or grant access to:

(1) Any digital asset or digital account in violation of any applicable federal law; or

(2) Any digital asset or digital account to which the principal would not have been permitted access in the ordinary course of business by the custodian.

(d) No cause of action shall lie in any court against any digital records custodian, its officers, employees, agents, or other specified persons for providing digital assets or digital accounts in accordance with this section.

SECTION 12. This act shall take effect July 1, 2014, the public welfare requiring it, and shall apply to estates of decedents dying on or after such date.