

AN ACT relating to the Uniform Fiduciary Access to Digital Assets Act.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. KRS CHAPTER 395A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*As used in this chapter:*

*(1) "Account holder" means:*

*(a) A person that has entered into a terms-of-service agreement with a custodian; or*

*(b) A fiduciary for a person described in paragraph (a) of this subsection;*

*(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 electronic communications;*

*(4) "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;*

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

*(6) "Content of an electronic communication" means information concerning the substance or meaning of the communication which:*

*(a) Has been sent or received by the account holder;*

*(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 an account holder;*

*(8) "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;
- (9) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;
- (10) "Electronic communication" has the same meaning as in 18 U.S.C. sec. 2510(12), as amended;
- (11) "Electronic-communication service" means a custodian that provides to the public the ability to send or receive an electronic communication;
- (12) "Fiduciary" means an original, additional, or successor personal representative, conservator, guardian, agent, or trustee;
- (13) "Governing instrument" means a will, trust, instrument creating a power of attorney, or other dispositive or nominative instrument;
- (14) "Guardian" means a person appointed by the court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem;
- (15) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like;
- (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 the applicable law of this state 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 person" means an individual for whom a conservator or guardian has been appointed. The term includes an individual for whom an application for the appointment of a conservator or guardian 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 an account holder computer processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. sec. 2510(14), as amended;
- (23) "Terms-of-service agreement" means an agreement that controls the relationship between an account holder and a custodian;
- (24) "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; and
- (25) "Will" includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 395A IS CREATED TO READ AS FOLLOWS:

- (1) This chapter applies to:
- (a) A fiduciary or agent acting under a will or power of attorney executed before, on, or after the effective date of this Act;
- (b) A personal representative acting for a decedent who died before, on, or after the effective date of this Act;
- (c) A conservatorship or guardianship proceeding, whether pending in a court or commenced before, on, or after the effective date of this Act; and
- (d) A trustee acting under a trust created before, on, or after the effective date of this Act.

(2) 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.

→SECTION 3. A NEW SECTION OF KRS CHAPTER 395A IS CREATED TO READ AS FOLLOWS:

Subject to subsection (2) of Section 7 of this Act and unless otherwise ordered by the court or provided in the will of a decedent, the personal representative of the decedent shall have 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 U.S.C. sec. 2702(b), as amended;

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

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

→SECTION 4. A NEW SECTION OF KRS CHAPTER 395A IS CREATED TO READ AS FOLLOWS:

Subject to subsection (2) of Section 7 of this Act, the court, after an opportunity for a hearing pursuant to the applicable conservatorship laws of this state, may grant a conservator or, if the conservator has not been appointed, a guardian 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 U.S.C. sec. 2702(b), as amended;

(2) Any catalogue of electronic communications sent or received by the protected person;

(3) Any other digital asset in which the protected person has a right or interest.

→SECTION 5. A NEW SECTION OF KRS CHAPTER 395A IS CREATED TO READ AS FOLLOWS:

- (1) 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 subsection (2) of Section 7 of this Act, 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 U.S.C. sec. 2702(b), as amended.
- (2) Subject to subsection (2) of Section 7 of this Act and unless otherwise ordered by the court or provided by a power of attorney, an agent has the right to access:
- (a) Any catalogue of electronic communications sent or received by the principal; and
- (b) Any other digital asset in which the principal has a right or interest.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 395A IS CREATED TO READ AS FOLLOWS:

- (1) Subject to subsection (2) of Section 7 of this Act 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.
- (2) Subject to subsection (2) of Section 7 of this Act 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:
- (a) The content of an electronic communication that the custodian is permitted to disclose under the Electronic Communications Privacy Act , 18 U.S.C. sec. 2702(b), as amended;
- (b) Any catalogue of electronic communications sent or received by the original or any successor account holder; and
- (c) Any other digital asset in which the original or any successor account holder has a right or interest.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 395A IS CREATED TO READ AS FOLLOWS:

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

(a) 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 powers under Kentucky law;

(b) Shall, for the purpose of applicable electronic privacy laws, be deemed to have the lawful consent of the account holder for the custodian to divulge the content of an electronic communication to the fiduciary; and

(c) Is an authorized user for the purposes of any applicable computer fraud and unauthorized computer access laws, including KRS 434.840 to 434.860.

(2) Unless an account holder, after the effective date of this Act, 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:

(a) The provision shall be void as against the strong public policy of this state; and

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

(3) A choice-of-law provision in a terms-of-service agreement shall be unenforceable against a fiduciary acting under this chapter 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 (2) of this section.

(4) 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;

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

(b) Is an authorized user for the purposes of any applicable computer fraud and unauthorized computer access laws, including KRS 434.840 to 434.860.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 395A IS CREATED TO READ AS FOLLOWS:

(1) If a fiduciary with a right under this chapter to access a digital asset of an account holder complies with subsection (2) of this section, the custodian shall comply with the fiduciary's request in a record for:

(a) Access to the asset;

(b) Control of the asset; and

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

(2) If a request under subsection (1) of this section is made by:

(a) A personal representative with a right of access under Section 3 of this Act, the request shall be accompanied by a certified copy of the letter of appointment of the representative, on order dispensing with administration pursuant to KRS 395.455, or court order;

(b) A conservator or guardian with the right of access under Section 4 of this Act, the request shall be accompanied by a certified copy of the court order that gives the conservator or guardian authority over the digital asset;

(c) An agent with the right of access under Section 5 of this Act, the request shall 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; or

(d) A trustee with the right of access under Section 6 of this Act, the request shall be accompanied by a certified copy of the trust instrument or a

certification of the trust under KRS 386B.10-120 that authorizes the trustee to exercise authority over the digital asset.

(3) A custodian shall comply with a request made under subsection (1) of this section no later than sixty (60) days after receipt. If the custodian fails to comply, the fiduciary may apply to the court for an order directing compliance.

(4) 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.

→SECTION 9. A NEW SECTION OF KRS CHAPTER 395A IS CREATED TO READ AS FOLLOWS:

A custodian and its officers, employees, and agents are immune from liability for any act done in good faith compliance with this chapter.

→SECTION 10. A NEW SECTION OF KRS CHAPTER 395A IS CREATED TO READ AS FOLLOWS:

In applying and construing the Uniform Fiduciary Access to Digital Assets Act, as enacted in this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

→SECTION 11. A NEW SECTION OF KRS CHAPTER 395A IS CREATED TO READ AS FOLLOWS:

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

→SECTION 12. A NEW SECTION OF KRS CHAPTER 395A IS CREATED TO READ AS FOLLOWS:

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this



*chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.*

→Section 13. This chapter may be cited as the Uniform Fiduciary Access to Digital Assets Act.