



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 300
[2015 Assembly Bill 695]

Wisconsin Digital Property Act

2015 Wisconsin Act 300 generally adopts the Revised Uniform Fiduciary Access to Digital Assets Act, as recommended by the National Conference of Commissioners on Uniform State Laws. The Act governs the disclosure of digital property¹ to a personal representative of a deceased person's estate, agent under a power of attorney, trustee, or conservator or guardian of a protected person (collectively, "fiduciary").

The Act creates a priority system for determining the disclosure of digital property. First, a person may use an online tool² to direct the disclosure of his or her digital property to a designated recipient. A direction using an online tool overrides a contrary direction by the person in a will, trust, power of attorney, or any other governing instrument. Second, if the person has not used an online tool, the person may direct disclosure of his or her digital property in a will, trust, power of attorney, or any other governing instrument. Lastly, a person's direction in an online tool or governing instrument overrides a contrary provision in a terms of service agreement.

In addition, the Act contains various provisions governing the disclosure of digital property, including the content of electronic communications,³ to a fiduciary. The Act generally

¹ Under the Act, "digital property" means an electronic record in which a person has a right or interest, but not including underlying property or an underlying liability unless the property or liability is itself an electronic record.

² Under the Act, "online tool" means a setting provided by a custodian that allows the user, by an agreement between the custodian and user that is distinct from the user's assent to the terms of service, to provide directions for disclosure or nondisclosure of digital property to a designated recipient. A "custodian" is a person that carries, maintains, processes, receives, or stores a user's digital property.

³ Under the Act, "content of an electronic communication" means information concerning the substance or meaning of a communication if the information: (a) was sent or received by the person; (b) is electronically stored

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

requires a custodian to disclose a person's digital property to a fiduciary if certain requirements are satisfied and if the fiduciary provides certain information to the custodian.

The Act contains additional provisions relating to methods by which a custodian discloses digital property to a fiduciary; custodian compliance and immunity; terms of service agreements; and fiduciary duty and authority.

Effective date: April 1, 2016. The Act generally applies to a fiduciary acting under a will or power of attorney executed before, on, or after April 1, 2016; a personal representative acting for a decedent who died before, on, or after April 1, 2016; a guardianship or conservatorship proceeding, whether pending in a court or commenced before, on, or after April 1, 2016; or a trustee acting under a trust created before, on, or after April 1, 2016.

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by a custodian that provides an electronic communication service to the public or is carried or maintained by a custodian that provides a remote computing service to the public; and (c) is not readily accessible to the public.