



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4226/1
FFK:emw/ahe/wlj

2015 SENATE BILL 715

February 9, 2016 - Introduced by Senators ROTH, RISSER, OLSEN and MILLER, cosponsored by Representatives R. BROOKS, SARGENT, KAHL, KREMER, GOYKE, GANNON, POPE, KOLSTE, HUTTON, SINICKI, MURPHY and GENRICH. Referred to Committee on Revenue, Financial Institutions, and Rural Issues.

1 **AN ACT** *to amend* 155.30 (3) (form) and 244.61 (form); and *to create* 54.20 (2)
2 (m), 112.12, 155.20 (9), 244.41 (1) (i), 244.43 (9m) and 701.0816 (28) of the
3 statutes; **relating to:** creating the Revised Uniform Fiduciary Access to Digital
4 Assets Act.

Analysis by the Legislative Reference Bureau

This bill adopts the Revised Uniform Fiduciary Access to Digital Assets Act, as approved and recommended by the National Conference of Commissioners on Uniform State Laws in July 2015. The bill provides default provisions related to a fiduciary's right to access digital assets. Under the bill, a digital asset is an electronic record in which an individual has a right or interest. Examples of digital assets include information stored on a computer or other digital device, content uploaded onto a Web site, text messages, and rights in domain names or rights associated with online games. A fiduciary is a personal representative, guardian, conservator, agent under a power of attorney, or trustee.

Terms of service agreement

Under the bill, a terms of service agreement is an agreement that controls the relationship between a user and a custodian. A custodian is a person that carries, maintains, processes, receives, or stores a user's digital assets.

This bill does not change or impair the rights of a custodian or a user under a terms of service agreement to access and use digital assets. Nor does the bill give a fiduciary any other rights than the rights held by the user for whom the fiduciary acts or represents.

SENATE BILL 715***Three-tiered priority system***

This bill creates the following three-tiered system to address contrary directions regarding disclosure of digital assets to a fiduciary:

1. This bill gives first priority to a direction made by a user in a will, trust, power of attorney, or other governing instrument.

2. If the user does not provide a direction in a will, trust, power of attorney, or other governing instrument, the bill gives priority to a direction provided in an online tool. Under the bill, an online tool is an electronic service provided by the custodian, separate from the general terms of service, that allows a user to provide directions relating to disclosure of the user's digital assets to a third person. A designated recipient is a person chosen by the user using an online tool to administer digital assets.

3. Finally, if the user does not provide a direction in a will, trust, power of attorney, or other governing instrument or using an online tool, direction in the terms of service governing the digital assets apply to the disclosure of the digital assets to a fiduciary. If the terms of service do not address fiduciary access, the default rules provided in this bill apply.

The three-tiered system established in this bill deviates from the Revised UFADAA. Under the Revised UFADAA, a direction given in an online tool is given the highest priority, followed by a direction given in a will, trust, power of attorney, or other record. The final tier is same under the bill and the Revised UFADAA.

Disclosure of content of electronic communications

An electronic communication is a specific type of digital asset that is subject to the federal Electronic Communications Privacy Act. Under the ECPA, a custodian may divulge the contents of an electronic communication only 1) to an addressee or intended recipient of the communication or an agent of such addressee or intended recipient or 2) with the lawful consent of the originator or an addressee or intended recipient of such communication. A catalogue of electronic communications is information that identifies with whom an electronic communication is, the electronic address of that person, and the time and date of the communication. The catalogue does not include the content of the electronic communication.

The bill sets forth the conditions under which a custodian must disclose the content of electronic communications to each type of fiduciary. For example, a custodian must disclose content of electronic communications to a personal representative of a deceased user if the personal representative gives the custodian a written request, specific documentation establishing the personal representative's authority and, upon the custodian's request, a court order that finds that 1) the user had an identifiable specific account with the digital custodian, 2) disclosure of the content of the electronic communications of the user would not violate the ECPA or other applicable law, 3) unless the user provided direction using an online tool, the user consented to disclosure of the contents of electronic communications, and 4) disclosure of the contents of electronic communications is necessary for the administration of the user's estate.

Under the bill, a custodian must disclose content of electronic communication to a trustee, agent under a power of attorney, guardian, or a conservator if the

SENATE BILL 715

trustee, agent, guardian, or conservator gives the guardian a written request, specific documentation establishing the fiduciary's authority, and, upon the custodian's request, specific information to identify the user's account. However, the bill does not limit a custodian's ability to obtain or require a court order that specifies, among other things, that there is sufficient consent from the user to support the requested disclosure.

Access to digital assets other than content of electronic communications

The bill also sets forth the conditions under which a custodian must disclose digital assets other than content of electronic communications, including a catalogue of electronic communications, to each type of fiduciary. A custodian must disclose digital assets other than content of electronic communications to a personal representative if the personal representative gives the custodian a written request, specific documentation establishing the personal representative's authority, and, if requested by the custodian, 1) certain information to identify the user's account, 2) an affidavit from the personal representative that the disclosure is reasonably necessary for the administration of the estate, or 3) a court order to identify the user's account and that the disclosure is reasonably necessary for the administration of the estate. Under the bill, a custodian must disclose digital assets other than content of electronic communications to a trustee, agent under a power of attorney, guardian, or conservator if the trustee, agent, guardian, or conservator gives the guardian a written request, specific documentation establishing the fiduciary's authority, and, upon the custodian's request, specific information to identify the user's account.

Disclosure of digital assets

Under the bill, a custodian may comply with a request to disclose digital assets made by a fiduciary or a designated recipient by doing any of the following:

1. Providing full access to the user's account.
2. Providing partial access to the account that is sufficient to perform the tasks with which the requester is charged.
3. Providing a copy of any digital assets that the user could have accessed on the date the request was made.

The bill does not require a custodian to disclose a digital asset that has been deleted by a user. Additionally, if a request is made for some, but not all, of a user's digital assets and the custodian determines that segregating the requested digital assets imposes an undue burden on the custodian, the custodian is not required to comply with the request. If a custodian refuses to comply with a request because segregation of the digital assets imposes an undue burden, the custodian or the requester may seek a court order for the custodian to disclose any of the following:

1. A subset of the digital assets, limited by date.
2. All of the digital assets to the requester.
3. None of the digital assets.
4. All of the digital assets to the court for review.

The bill allows a custodian to charge a reasonable administrative charge for disclosing digital assets.

SENATE BILL 715***Fiduciary duties and powers***

Under the bill, all fiduciary duties that apply to tangible personal property apply to digital assets, including the duty of care, the duty of loyalty, and the duty of confidentiality. The bill also affirms that a fiduciary acting within the scope of the fiduciary's duties is an authorized user for purposes of any unauthorized computer access law.

Under the bill, a fiduciary with authority over tangible personal property of a decedent, protected person, principal, or settlor has the right to access the property and any digital asset stored in the tangible personal property and is an authorized user for purposes of any unauthorized computer access law. The bill also allows a fiduciary to request a custodian to terminate a user's account and describes the documentation that must accompany such a request.

Custodian compliance and immunity

Under the bill, a custodian must comply with a request from a fiduciary or a designated recipient to disclose a digital asset no later than 60 days after receiving the request. If the custodian does not comply with the request, the requester may seek a court order for compliance. The bill provides that a custodian is immune from liability for acts or omission made in good faith to comply with requirements created in this bill.

Applicability

This bill applies to a digital custodian only if the user resides in this state or resided in this state at the time of the user's death. Additionally, the bill does not apply to a digital asset of an employer used by an employee.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 54.20 (2) (m) of the statutes is created to read:

2 54.20 (2) (m) Access the ward's digital assets in accordance with s. 112.12.

3 **SECTION 2.** 112.12 of the statutes is created to read:

4 **112.12 Uniform Fiduciary Access to Digital Assets Act. (1) SHORT TITLE.**

5 This section may be cited as the Revised Uniform Fiduciary Access to Digital Assets
6 Act.

7 **(2) DEFINITIONS.** In this section:

SENATE BILL 715

1 (a) "Account" means an arrangement under a terms of service agreement in
2 which a custodian carries, maintains, processes, receives, or stores a digital asset of
3 the user or provides goods or services to the user.

4 (b) "Agent" means a person granted authority to act for a principal under a
5 durable or nondurable power of attorney, whether denominated an agent,
6 attorney-in-fact, or otherwise.

7 (c) "Carries" means engages in the transmission of an electronic
8 communication.

9 (d) "Catalogue of electronic communications" means information that
10 identifies each person with which a user has had an electronic communication, the
11 time and date of the communication, and the electronic address of the person.

12 (e) "Conservator" means a person appointed under s. 54.76 to manage the
13 estate of a living individual.

14 (f) "Content of an electronic communication" means information concerning the
15 substance or meaning of a communication that satisfies all of the following:

16 1. The information was sent or received by a user.

17 2. The information is electronically stored by a custodian that provides an
18 electronic communication service to the public or is carried or maintained by a
19 custodian that provides a remote computing service to the public.

20 3. The information is not readily accessible to the public.

21 (g) "Court" means the circuit court or judge assigned to exercise probate
22 jurisdiction.

23 (h) "Custodian" means a person that carries, maintains, processes, receives, or
24 stores a digital asset of a user.

SENATE BILL 715**SECTION 2**

1 (i) “Designated recipient” means a person chosen by the user using an online
2 tool to administer the user’s digital assets.

3 (j) “Digital asset” means an electronic record in which an individual has a right
4 or interest. A “digital asset” does not include an underlying asset or liability unless
5 the asset or liability is itself an electronic record.

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

8 (L) “Electronic communication” has the meaning given in 18 USC 2510 (12).

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

11 (n) “Fiduciary” means an original, additional, or successor personal
12 representative, conservator, guardian, agent, or trustee.

13 (o) “Guardian” means a person appointed under s. 54.10.

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

16 (q) “Online tool” means an electronic service provided by a custodian under an
17 agreement between the custodian and user that is distinct from the terms of service
18 agreement that allows the user to provide directions for disclosure or nondisclosure
19 of the user’s digital assets to a 3rd person.

20 (r) “Person” means an individual, estate, business or nonprofit entity, public
21 corporation, government or governmental subdivision, agency, or instrumentality, or
22 other legal entity.

23 (s) “Personal representative” has the meaning given in s. 851.23, but also
24 includes a special administrator.

SENATE BILL 715

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

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

5 (v) "Protected person" means any of the following:

6 1. An individual for whom a guardian is appointed or for whom an application
7 for the appointment of a guardian is pending.

8 2. An individual for whom a conservator is appointed or for whom an
9 application for the appointment of a conservator is pending.

10 (w) "Record" means information that is inscribed on a tangible medium or that
11 is stored in an electronic or other medium and is retrievable in perceivable form.

12 (x) "Remote computing service" means a custodian that provides to a user
13 computer processing services or the storage of digital assets by means of an electronic
14 communications system, as defined in 18 USC 2510 (14).

15 (y) "Terms of service agreement" means an agreement that controls the
16 relationship between a user and a custodian.

17 (z) "Trustee" means a person with legal title to an asset under an agreement
18 or declaration that creates a beneficial interest in another.

19 (zd) "User" means a person that has an account with a custodian.

20 (zk) "Will" includes a codicil and any document incorporated by reference in a
21 testamentary document under s. 853.32 (1) or (2).

22 **(3) DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.** (a) A user may allow or
23 prohibit disclosure to a fiduciary of some or all of the user's digital assets, including
24 the content of electronic communications sent or received by the user, in a will, trust,

SENATE BILL 715**SECTION 2**

1 power of attorney, or in any other type of inter vivos governing instrument, as defined
2 in s. 700.27 (1) (c), or governing instrument, as defined in s. 854.01 (2).

3 (b) If a user does not allow or prohibit disclosure to a fiduciary of some or all
4 of the user's digital assets under par. (a), the user may use an online tool to direct the
5 custodian to disclose or not to disclose some or all of the user's digital assets,
6 including the content of electronic communications. A contrary direction made by a
7 user under par. (a) overrides a direction regarding disclosure made using an online
8 tool.

9 (c) A user's direction under par. (a) or (b) takes precedence over a contrary
10 provision in a terms of service agreement that does not require the user to act
11 affirmatively and distinctly from the user's assent to the terms of service.

12 **(4) TERMS OF SERVICE AGREEMENT.** (a) This section does not change or impair
13 the rights of a custodian or a user under a terms of service agreement to access and
14 use digital assets of the user.

15 (b) This section does not give a fiduciary rights other than the rights held by
16 the user for whom, or for whose estate, the fiduciary acts or represents.

17 (c) A fiduciary's access to digital assets may be modified or eliminated by any
18 of the following:

19 1. The user.

20 2. Federal law.

21 3. A terms of service agreement if the user has not provided direction under sub.

22 (3).

23 **(5) PROCEDURE FOR DISCLOSING DIGITAL ASSETS.** (a) When disclosing digital
24 assets of a user under this section, the custodian may in its sole discretion provide
25 a fiduciary or designated recipient with any of the following:

SENATE BILL 715

- 1 1. Full access to the user's account.
- 2 2. Partial access to the user's account that is sufficient to perform the tasks with
3 which the fiduciary or designated recipient is charged.
- 4 3. A copy in a record of any digital asset that the user could have accessed if the
5 user were alive, had full capacity, and had full access to the account on the date the
6 custodian received the request for disclosure.
- 7 (b) A custodian may assess a reasonable administrative charge to a fiduciary
8 or designated recipient for the cost of disclosing digital assets under this section.
- 9 (c) A custodian need not disclose under this section a digital asset deleted by
10 the user.
- 11 (d) If a user directs or a fiduciary requests a custodian to disclose under this
12 section some, but not all, of the user's digital assets, the custodian need not disclose
13 the digital assets if segregation of the digital assets would impose an undue burden
14 on the custodian. If the custodian refuses to disclose digital assets because the
15 custodian believes the segregation of the digital assets imposes an undue burden, the
16 custodian or fiduciary may seek an order from the court to disclose any of the
17 following:
 - 18 1. To the fiduciary or designated recipient, a subset of the user's digital assets
19 that is limited by date.
 - 20 2. To the fiduciary or designated recipient, all of the user's digital assets.
 - 21 3. None of the user's digital assets.
 - 22 4. To the court for review in camera, all of the user's digital assets.
- 23 **(6) DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS; DECEASED USER.** If
24 a deceased user consented or a court directs disclosure of the contents of electronic
25 communications of a deceased user, the custodian shall disclose to the personal

SENATE BILL 715**SECTION 2**

1 representative of the user's estate the content of an electronic communication sent
2 or received by the user if the personal representative gives the custodian all of the
3 following:

4 (a) A written request for disclosure in physical or electronic form.

5 (b) A certified copy of the death certificate of the user.

6 (c) A certified copy of the letters to administer the user's estate or, if the
7 personal representative is a special administrator, a certified copy of the letters of
8 special administration.

9 (d) Unless the user provided direction using an online tool, a copy of the will,
10 trust, power of attorney, or other record evidencing the user's consent to disclosure
11 of the content of electronic communications.

12 (e) If requested by the custodian, any of the following:

13 1. A number, username, address, or other unique subscriber or account
14 identifier assigned by the custodian to identify the user's account.

15 2. Evidence linking the account to the user.

16 3. A court order that includes all of the following findings:

17 a. The user had a specific account with the custodian that is identifiable by the
18 information specified in subd. 1.

19 b. The disclosure of the content of electronic communications of the user does
20 not violate 18 USC 2701 et seq., 47 USC 222, or other applicable law.

21 c. Unless the user provided direction using an online tool, the user consented
22 to disclosure of the content of electronic communications.

23 d. The disclosure of the content of electronic communications of the user is
24 reasonably necessary for administration of the estate.

SENATE BILL 715

1 **(7) DISCLOSURE OF OTHER DIGITAL ASSETS; DECEASED USER.** Unless a deceased user
2 prohibited disclosure of digital assets or the court directs otherwise, a custodian shall
3 disclose to the personal representative of the user's estate a catalogue of electronic
4 communications sent or received by the user and digital assets, other than the
5 content of electronic communications, of the user, if the personal representative gives
6 the custodian all of the following:

7 (a) A written request for disclosure in physical or electronic form.

8 (b) A certified copy of the death certificate of the user.

9 (c) A certified copy of the letters to administer the user's estate or, if the
10 personal representative is a special administrator, a certified copy of the letters of
11 special administration.

12 (d) If requested by the custodian, any of the following:

13 1. A number, username, address, or other unique subscriber or account
14 identifier assigned by the custodian to identify the user's account.

15 2. Evidence linking the account to the user.

16 3. An affidavit stating that disclosure of the user's digital assets is reasonably
17 necessary for administration of the estate.

18 4. A court order that includes all of the following findings:

19 a. The user had a specific account with the custodian, identifiable by the
20 information specified in subd. 1.

21 b. The disclosure of the user's digital assets is reasonably necessary for
22 administration of the estate.

23 **(8) DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS; PRINCIPAL.** To the
24 extent a power of attorney expressly grants an agent authority over the content of
25 electronic communications sent or received by the principal and unless directed

SENATE BILL 715

1 otherwise by the principal or the court, a custodian shall disclose to the agent the
2 content of electronic communications if the agent gives the custodian all of the
3 following:

4 (a) A written request for disclosure in physical or electronic form.

5 (b) An original or copy of the power of attorney expressly granting the agent
6 authority over the content of electronic communications of the principal.

7 (c) A certification by the agent, under penalty of perjury, that the power of
8 attorney is in effect.

9 (d) If requested by the custodian, any of the following:

10 1. A number, username, address, or other unique subscriber or account
11 identifier assigned by the custodian to identify the principal's account.

12 2. Evidence linking the account to the principal.

13 **(9) DISCLOSURE OF DIGITAL ASSETS OTHER THAN CONTENT OF ELECTRONIC**
14 **COMMUNICATIONS; PRINCIPAL.** Unless otherwise ordered by the court, directed by the
15 principal, or provided in a power of attorney, a custodian shall disclose to an agent
16 with specific authority over the principal's digital assets or general authority to act
17 on behalf of a principal a catalogue of electronic communications sent or received by
18 the principal and the principal's digital assets, other than the content of electronic
19 communications, if the agent gives the custodian all of the following:

20 (a) A written request for disclosure in physical or electronic form.

21 (b) An original or a copy of the power of attorney that gives the agent specific
22 authority over the principal's digital assets or general authority to act on behalf of
23 the principal.

24 (c) A certification by the agent, under penalty of perjury, that the power of
25 attorney is in effect.

SENATE BILL 715

1 (d) If requested by the custodian, any of the following:

2 1. A number, username, address, or other unique subscriber or account
3 identifier assigned by the custodian to identify the principal's account.

4 2. Evidence linking the account to the principal.

5 **(10) DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST; TRUSTEE IS ORIGINAL USER.**
6 Unless otherwise ordered by the court or provided in a trust, a custodian shall
7 disclose to a trustee who is an original user of an account any digital asset of the
8 account that is held in trust, including a catalogue of electronic communications of
9 the trustee and the content of electronic communications.

10 **(11) DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD IN TRUST;**
11 **TRUSTEE IS NOT ORIGINAL USER.** Unless otherwise ordered by the court, directed by the
12 user, or provided in a trust, a custodian shall disclose to a trustee that is not an
13 original user of an account the content of an electronic communication sent or
14 received by an original or successor user and carried, maintained, processed,
15 received, or stored by the custodian in the trust's account if the trustee gives the
16 custodian all of the following:

17 (a) A written request for disclosure in physical or electronic form.

18 (b) A copy of the trust instrument or a certification of the trust under s.
19 701.1013 that includes consent to disclosure of the content of electronic
20 communications to the trustee.

21 (c) A certification by the trustee, under penalty of perjury, that the trust exists
22 and that the trustee is a currently acting trustee of the trust.

23 (d) If requested by the custodian, any of the following:

24 1. A number, username, address, or other unique subscriber or account
25 identifier assigned by the custodian to identify the trust's account.

SENATE BILL 715

1 2. Evidence linking the account to the trust.

2 **(12) DISCLOSURE OF DIGITAL ASSETS OTHER THAN CONTENT OF ELECTRONIC**
3 COMMUNICATIONS; TRUSTEE IS NOT ORIGINAL USER. Unless otherwise ordered by the
4 court, directed by the user, or provided in a trust, a custodian shall disclose, to a
5 trustee that is not an original user of an account, a catalogue of electronic
6 communications sent or received by an original or successor user and stored, carried,
7 or maintained by the custodian in an account of the trust and any digital assets, other
8 than the content of electronic communications, in which the trust has a right or
9 interest if the trustee gives the custodian all of the following:

10 (a) A written request for disclosure in physical or electronic form.

11 (b) A copy of the trust instrument or a certification of the trust under s.
12 701.1013.

13 (c) A certification by the trustee, under penalty of perjury, that the trust exists
14 and the trustee is a currently acting trustee of the trust.

15 (d) If requested by the custodian, any of the following:

16 1. A number, username, address, or other unique subscriber or account
17 identifier assigned by the custodian to identify the trust's account.

18 2. Evidence linking the account to the trust.

19 **(13) DISCLOSURE OF DIGITAL ASSETS; CONSERVATOR OR GUARDIAN.** (a) 1. After an
20 opportunity for a hearing under s. 54.10, the court may grant a guardian access to
21 the digital assets of an individual for whom a guardian has been appointed or for
22 whom an application for the appointment of a guardian is pending.

23 2. After an opportunity for a hearing under s. 54.76, the court may grant a
24 conservator access to the digital assets of an individual for whom a conservator has

SENATE BILL 715

1 been appointed or for whom an application for the appointment of a conservator is
2 pending.

3 (b) Unless otherwise ordered by the court or directed by the user, a custodian
4 shall disclose to a guardian or custodian the catalogue of electronic communications
5 sent or received by a protected person and any digital assets, other than the content
6 of electronic communications, in which the protected person has a right or interest
7 if the guardian or conservator gives the custodian all of the following:

8 1. A written request for disclosure in physical or electronic form.

9 2. A certified copy of the court order that gives the guardian or conservator
10 authority over the protected person's digital assets.

11 3. If requested by the custodian, any of the following:

12 a. A number, username, address, or other unique subscriber or account
13 identifier assigned by the custodian to identify the account of the protected person.

14 b. Evidence linking the account to the protected person.

15 (c) A guardian or conservator with general authority to manage a protected
16 person's assets may request a custodian of the protected person's digital assets to
17 suspend or terminate an account of the protected person for good cause. A request
18 made under this paragraph shall be accompanied by a certified copy of the court
19 order granting the guardian or conservator general authority to manage the
20 protected person's assets.

21 **(14) FIDUCIARY; DUTIES AND AUTHORITY.** (a) The legal duties imposed on a
22 fiduciary with the authority to manage tangible property apply to a fiduciary's
23 management of digital assets, including all of the following:

24 1. The duty of care.

25 2. The duty of loyalty.

SENATE BILL 715

1 3. The duty of confidentiality.

2 (b) A fiduciary's authority with respect to a user's digital asset may not be used
3 to impersonate the user, is limited by the scope of the fiduciary's duties, and is subject
4 to all of the following:

5 1. Except as otherwise provided in sub. (3), the applicable terms of service.

6 2. Other applicable law, including copyright law.

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

11 (d) A fiduciary acting within the scope of the fiduciary's duties is an authorized
12 user of the digital assets of the decedent, protected person, principal, or settlor for
13 the purpose of applicable computer fraud and unauthorized computer access laws.

14 (e) 1. A fiduciary with authority over the tangible personal property of a
15 decedent, protected person, principal, or settlor has the right to access the tangible
16 personal property and any digital asset stored in the tangible personal property.

17 2. A fiduciary with authority over the tangible personal property of a decedent,
18 protected person, principal, or settlor is an authorized user of digital assets stored
19 in the tangible personal property for the purpose of computer fraud and
20 unauthorized computer access laws.

21 (f) A custodian may disclose information in a user's account to a fiduciary of the
22 user when the information is required to terminate an account used to access digital
23 assets licensed to the user.

SENATE BILL 715

1 (g) A fiduciary of a user may request a custodian to terminate the user's
2 account. A request for termination must be in writing, in either physical or electronic
3 form, and accompanied by all of the following:

4 1. If the user is deceased, a certified copy of the death certificate of the user.

5 2. Any of the following that grants the fiduciary authority over the user's
6 account:

7 a. A certified copy of the fiduciary's letters to administer the user's estate.

8 b. A certified copy of the letters of special administration.

9 c. A certified copy of a court order.

10 d. An original or copy of a power of attorney.

11 e. A copy of the trust instrument or a certification of the trust under s. 701.1013.

12 3. If requested by the custodian, any of the following:

13 a. A number, username, address, or other unique subscriber or account
14 identifier assigned by the custodian to identify the user's account.

15 b. Evidence linking the account to the user.

16 c. A finding by the court that the user had a specific account with the custodian,
17 identifiable by the information specified in subd. 3. a.

18 **(15) CUSTODIAN COMPLIANCE AND IMMUNITY.** (a) Not later than 60 days after
19 receipt of the information required under subs. (6) to (13), as applicable, a custodian
20 shall comply with a request under this section from a fiduciary or designated
21 recipient to disclose digital assets or terminate an account. If the custodian fails to
22 comply, the fiduciary or designated recipient may apply to the court for an order
23 directing the custodian to comply with the request.

SENATE BILL 715**SECTION 2**

1 (b) A court shall include in an order directing a custodian to comply with a
2 request made under this section a finding that compliance with the request does not
3 violate 18 USC 2702.

4 (c) A custodian may notify the user that a request for disclosure of digital assets
5 or to terminate an account was made under this section.

6 (d) A custodian may deny a request under this section from a fiduciary or
7 designated recipient for disclosure of digital assets or to terminate an account if the
8 custodian is aware of any lawful access to the account after the receipt of the
9 fiduciary's request.

10 (e) This section does not limit a custodian's ability to obtain or to require a
11 fiduciary or designated recipient requesting disclosure or termination under this
12 section to obtain a court order that does all of the following:

- 13 1. Specifies that an account belongs to the protected person or principal.
- 14 2. Specifies that there is sufficient consent from the protected person or
15 principal to support the requested disclosure.
- 16 3. Contains any findings required by law other than this section.

17 (f) A custodian and its officers, employees, and agents are immune from
18 liability for an act or omission done in good faith in compliance with this section.

19 **(16) UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing
20 this uniform act, consideration must be given to the need to promote uniformity of
21 the law with respect to its subject matter among states that enact it.

22 **(17) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE**
23 **ACT.** This section modifies, limits, or supersedes the Electronic Signatures in Global
24 and National Commerce Act, 15 USC 7001 et seq., but does not modify, limit, or

SENATE BILL 715

1 supersede section 101 (c) of that act, 15 USC 7001 (c), or authorize electronic delivery
2 of any of the notices described in section 103 (b) of that act, 15 USC 7003 (b).

3 **(18) APPLICABILITY.** (a) This section applies to all of the following:

4 1. A fiduciary acting under a will or power of attorney executed before, on, or
5 after the effective date of this subdivision [LRB inserts date].

6 2. A personal representative acting for a decedent who died before, on, or after
7 the effective date of this subdivision [LRB inserts date].

8 3. A guardianship or conservatorship proceeding, whether pending in a court
9 or commenced before, on, or after the effective date of this subdivision [LRB
10 inserts date].

11 4. A trustee acting under a trust created before, on, or after the effective date
12 of this subdivision [LRB inserts date].

13 (b) This section applies to a custodian only if the user resides in this state or
14 resided in this state at the time of the user's death.

15 (c) This section does not apply to a digital asset of an employer used by an
16 employee in the ordinary course of the employer's business.

17 **SECTION 3.** 155.20 (9) of the statutes is created to read:

18 155.20 (9) The health care agent may access the principal's digital assets, as
19 defined in s. 112.12 (2) (j), as provided under s. 112.12.

20 **SECTION 4.** 155.30 (3) (form) of the statutes is amended to read:

21 155.30 (3) (form)

22 **POWER OF ATTORNEY FOR HEALTH CARE**

23 Document made this.... day of.... (month),.... (year).

24 **CREATION OF POWER OF ATTORNEY**

25 **FOR HEALTH CARE**

SENATE BILL 715**SECTION 4**

1 I,... (print name, address and date of birth), being of sound mind, intend by this
2 document to create a power of attorney for health care. My executing this power of
3 attorney for health care is voluntary. Despite the creation of this power of attorney
4 for health care, I expect to be fully informed about and allowed to participate in any
5 health care decision for me, to the extent that I am able. For the purposes of this
6 document, "health care decision" means an informed decision to accept, maintain,
7 discontinue or refuse any care, treatment, service or procedure to maintain, diagnose
8 or treat my physical or mental condition.

9 In addition, I may, by this document, specify my wishes with respect to making
10 an anatomical gift upon my death.

DESIGNATION OF HEALTH CARE AGENT

12 If I am no longer able to make health care decisions for myself, due to my
13 incapacity, I hereby designate.... (print name, address and telephone number) to be
14 my health care agent for the purpose of making health care decisions on my behalf.
15 If he or she is ever unable or unwilling to do so, I hereby designate.... (print name,
16 address and telephone number) to be my alternate health care agent for the purpose
17 of making health care decisions on my behalf. Neither my health care agent nor my
18 alternate health care agent whom I have designated is my health care provider, an
19 employee of my health care provider, an employee of a health care facility in which
20 I am a patient or a spouse of any of those persons, unless he or she is also my relative.
21 For purposes of this document, "incapacity" exists if 2 physicians or a physician and
22 a psychologist who have personally examined me sign a statement that specifically
23 expresses their opinion that I have a condition that means that I am unable to receive
24 and evaluate information effectively or to communicate decisions to such an extent

SENATE BILL 715

1 that I lack the capacity to manage my health care decisions. A copy of that statement
2 must be attached to this document.

3 **GENERAL STATEMENT OF AUTHORITY GRANTED**

4 Unless I have specified otherwise in this document, if I ever have incapacity I
5 instruct my health care provider to obtain the health care decision of my health care
6 agent, if I need treatment, for all of my health care and treatment. I have discussed
7 my desires thoroughly with my health care agent and believe that he or she
8 understands my philosophy regarding the health care decisions I would make if I
9 were able. I desire that my wishes be carried out through the authority given to my
10 health care agent under this document.

11 If I am unable, due to my incapacity, to make a health care decision, my health
12 care agent is instructed to make the health care decision for me, but my health care
13 agent should try to discuss with me any specific proposed health care if I am able to
14 communicate in any manner, including by blinking my eyes. If this communication
15 cannot be made, my health care agent shall base his or her decision on any health
16 care choices that I have expressed prior to the time of the decision. If I have not
17 expressed a health care choice about the health care in question and communication
18 cannot be made, my health care agent shall base his or her health care decision on
19 what he or she believes to be in my best interest.

20 **LIMITATIONS ON MENTAL HEALTH TREATMENT**

21 My health care agent may not admit or commit me on an inpatient basis to an
22 institution for mental diseases, an intermediate care facility for persons with an
23 intellectual disability, a state treatment facility or a treatment facility. My health
24 care agent may not consent to experimental mental health research or

SENATE BILL 715**SECTION 4**

1 psychosurgery, electroconvulsive treatment or drastic mental health treatment
2 procedures for me.

3 **ADMISSION TO NURSING HOMES OR**
4 **COMMUNITY-BASED RESIDENTIAL FACILITIES**

5 My health care agent may admit me to a nursing home or community-based
6 residential facility for short-term stays for recuperative care or respite care.

7 If I have checked “Yes” to the following, my health care agent may admit me for
8 a purpose other than recuperative care or respite care, but if I have checked “No” to
9 the following, my health care agent may not so admit me:

- 10 1. A nursing home — Yes.... No....
11 2. A community-based residential facility — Yes.... No....

12 If I have not checked either “Yes” or “No” immediately above, my health care
13 agent may admit me only for short-term stays for recuperative care or respite care.

14 **PROVISION OF A FEEDING TUBE**

15 If I have checked “Yes” to the following, my health care agent may have a
16 feeding tube withheld or withdrawn from me, unless my physician has advised that,
17 in his or her professional judgment, this will cause me pain or will reduce my comfort.
18 If I have checked “No” to the following, my health care agent may not have a feeding
19 tube withheld or withdrawn from me.

20 My health care agent may not have orally ingested nutrition or hydration
21 withheld or withdrawn from me unless provision of the nutrition or hydration is
22 medically contraindicated.

23 Withhold or withdraw a feeding tube — Yes.... No....

24 If I have not checked either “Yes” or “No” immediately above, my health care
25 agent may not have a feeding tube withdrawn from me.

SENATE BILL 715**HEALTH CARE DECISIONS FOR
PREGNANT WOMEN**

If I have checked “Yes” to the following, my health care agent may make health care decisions for me even if my agent knows I am pregnant. If I have checked “No” to the following, my health care agent may not make health care decisions for me if my health care agent knows I am pregnant.

Health care decision if I am pregnant — Yes.... No....

If I have not checked either “Yes” or “No” immediately above, my health care agent may not make health care decisions for me if my health care agent knows I am pregnant.

ACCESS TO DIGITAL ASSETS

If I have checked “Yes” to the following, my health care agent may access the content of electronic communications on my behalf. If I have checked “No” to the following, my health care agent may not access the content of electronic communications on my behalf.

Access to content of electronic communications — Yes.... No....

If I have not checked either “Yes” or “No” immediately above, my agent may not access the content of electronic communications on my behalf.

**STATEMENT OF DESIRES,
SPECIAL PROVISIONS OR LIMITATIONS**

In exercising authority under this document, my health care agent shall act consistently with my following stated desires, if any, and is subject to any special provisions or limitations that I specify. The following are specific desires, provisions or limitations that I wish to state (add more items if needed):

1) -

SENATE BILL 715

1 of the principal, and am not directly financially responsible for the principal's health
 2 care. I am not a health care provider who is serving the principal at this time, an
 3 employee of the health care provider, other than a chaplain or a social worker, or an
 4 employee, other than a chaplain or a social worker, of an inpatient health care facility
 5 in which the declarant is a patient. I am not the principal's health care agent. To
 6 the best of my knowledge, I am not entitled to and do not have a claim on the
 7 principal's estate.

8 Witness No. 1:

9 (print) Name.... Date....

10 Address....

11 Signature....

12 Witness No. 2:

13 (print) Name.... Date....

14 Address....

15 Signature....

16 STATEMENT OF HEALTH CARE AGENT AND

17 ALTERNATE HEALTH CARE AGENT

18 I understand that.... (name of principal) has designated me to be his or her
 19 health care agent or alternate health care agent if he or she is ever found to have
 20 incapacity and unable to make health care decisions himself or herself. (name of
 21 principal) has discussed his or her desires regarding health care decisions with me.

22 Agent's signature....

23 Address....

24 Alternate's signature....

25 Address....

SENATE BILL 715

SECTION 4

1 Failure to execute a power of attorney for health care document under chapter
2 155 of the Wisconsin Statutes creates no presumption about the intent of any
3 individual with regard to his or her health care decisions.

4 This power of attorney for health care is executed as provided in chapter 155
5 of the Wisconsin Statutes.

6 ANATOMICAL GIFTS (optional)

7 Upon my death:

8 I wish to donate only the following organs or parts: (specify the organs or
9 parts).

10 I wish to donate any needed organ or part.

11 I wish to donate my body for anatomical study if needed.

12 I refuse to make an anatomical gift. (If this revokes a prior commitment that
13 I have made to make an anatomical gift to a designated donee, I will attempt to notify
14 the donee to which or to whom I agreed to donate.)

15 Failing to check any of the lines immediately above creates no presumption
16 about my desire to make or refuse to make an anatomical gift.

17 Signature.... Date....

18 **SECTION 5.** 244.41 (1) (i) of the statutes is created to read:

19 244.41 (1) (i) Access the content of an electronic communication, as defined in
20 s. 112.12 (2) (f), sent or received by the principal.

21 **SECTION 6.** 244.43 (9m) of the statutes is created to read:

22 244.43 (9m) Access a catalogue of electronic communications, as defined in s.
23 112.12 (2) (d), sent or received by the principal, and the principal’s digital assets, as
24 defined in s. 112.12 (2) (j), other than the content of electronic communications, as
25 defined in s. 112.12 (2) (f).

SENATE BILL 715**SECTION 7**

1 TOGETHER UNLESS YOU INCLUDE THAT REQUIREMENT IN THE SPECIAL
2 INSTRUCTIONS.

3 IF YOUR AGENT IS UNABLE OR UNWILLING TO ACT FOR YOU, YOUR
4 POWER OF ATTORNEY WILL END UNLESS YOU HAVE NAMED A
5 SUCCESSOR AGENT. YOU MAY ALSO NAME A 2ND SUCCESSOR AGENT.

6 THIS POWER OF ATTORNEY BECOMES EFFECTIVE IMMEDIATELY
7 UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS. THIS
8 POWER OF ATTORNEY DOES NOT REVOKE ANY POWER OF ATTORNEY
9 EXECUTED PREVIOUSLY UNLESS YOU SO PROVIDE IN THE SPECIAL
10 INSTRUCTIONS.

11 IF YOU REVOKE THIS POWER OF ATTORNEY, YOU SHOULD NOTIFY
12 YOUR AGENT AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A
13 COPY. IF YOUR AGENT IS YOUR SPOUSE OR DOMESTIC PARTNER AND
14 YOUR MARRIAGE IS ANNULLED OR YOU ARE DIVORCED OR LEGALLY
15 SEPARATED OR THE DOMESTIC PARTNERSHIP IS TERMINATED AFTER
16 SIGNING THIS DOCUMENT, THE DOCUMENT IS INVALID.

17 IF YOU HAVE QUESTIONS ABOUT THE POWER OF ATTORNEY OR THE
18 AUTHORITY YOU ARE GRANTING TO YOUR AGENT, YOU SHOULD SEEK
19 LEGAL ADVICE BEFORE SIGNING THIS FORM.

DESIGNATION OF AGENT

20 I (name of principal) name the following person as my agent:

21 Name of agent:

22 Agent's address:

23 Agent's telephone number:

24 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

SENATE BILL 715

1 Retirement plans

2 Taxes

3 **LIMITATION ON AGENT'S AUTHORITY**

4 An agent who is not my spouse or domestic partner MAY NOT use my property
5 to benefit the agent or a person to whom the agent owes an obligation of support
6 unless I have included that authority in the special instructions.

7 ACCESS TO DIGITAL ASSETS

8 If I have checked "Yes" to the following, my agent may access the content of
9 electronic communications on my behalf. If I have checked "No" to the following, my
10 agent may not access the content of electronic communications on my behalf.

11 Access to content of electronic communications — Yes.... No....

12 If I have not checked either "Yes" or "No" immediately above, my agent may not
13 access the content of electronic communications on my behalf.

14 **SPECIAL INSTRUCTIONS (OPTIONAL)**

15 You may give special instructions in the following space

16 **EFFECTIVE DATE**

17 This power of attorney is effective immediately unless I have stated otherwise
18 in the special instructions.

19 **NOMINATION OF GUARDIAN (OPTIONAL)**

20 If it becomes necessary for a court to appoint a guardian of my estate or
21 guardian of my person, I nominate the following person(s) for appointment:

22 Name of nominee for guardian of my estate:

23 Nominee's address:

24 Nominee's telephone number:

25 Name of nominee for guardian of my person:

SENATE BILL 715

1 Nominee’s address:

2 Nominee’s telephone number:

3 RELIANCE ON THIS POWER OF

4 ATTORNEY FOR FINANCES AND PROPERTY

5 Any person, including my agent, may rely upon the validity of this power of
6 attorney or a copy of it unless that person knows that the power of attorney has been
7 terminated or is invalid.

8 SIGNATURE AND ACKNOWLEDGMENT

9 Your signature Date

10 Your name printed

11 Your address

12 Your telephone number

13 State of

14 County of

15 This document was acknowledged before me on (date), by (name of
16 principal).

17 (Seal, if any)

18 Signature of notary

19 My commission expires:

20 This document prepared by:

21 IMPORTANT INFORMATION FOR AGENT

22 AGENT’S DUTIES

23 WHEN YOU ACCEPT THE AUTHORITY GRANTED UNDER THIS POWER
24 OF ATTORNEY, A SPECIAL LEGAL RELATIONSHIP IS CREATED BETWEEN
25 YOU AND THE PRINCIPAL. THIS RELATIONSHIP IMPOSES UPON YOU

SENATE BILL 715

1 LEGAL DUTIES THAT CONTINUE UNTIL YOU RESIGN OR THE POWER OF
2 ATTORNEY IS TERMINATED OR REVOKED. YOU MUST DO ALL OF THE
3 FOLLOWING:

4 (1) DO WHAT YOU KNOW THE PRINCIPAL REASONABLY EXPECTS YOU
5 TO DO WITH THE PRINCIPAL'S PROPERTY OR, IF YOU DO NOT KNOW THE
6 PRINCIPAL'S EXPECTATIONS, ACT IN THE PRINCIPAL'S BEST INTEREST.

7 (2) ACT IN GOOD FAITH.

8 (3) DO NOTHING BEYOND THE AUTHORITY GRANTED IN THIS POWER
9 OF ATTORNEY.

10 (4) DISCLOSE YOUR IDENTITY AS AN AGENT WHENEVER YOU ACT
11 FOR THE PRINCIPAL BY WRITING OR PRINTING THE NAME OF THE
12 PRINCIPAL AND SIGNING YOUR OWN NAME AS "AGENT" IN THE
13 FOLLOWING MANNER:

14 (principal's name) by (your signature) as agent

15 UNLESS THE SPECIAL INSTRUCTIONS IN THIS POWER OF ATTORNEY
16 STATE OTHERWISE, YOU MUST ALSO DO ALL OF THE FOLLOWING:

17 (1) ACT LOYALLY FOR THE PRINCIPAL'S BENEFIT.

18 (2) AVOID CONFLICTS THAT WOULD IMPAIR YOUR ABILITY TO ACT IN
19 THE PRINCIPAL'S BEST INTEREST.

20 (3) ACT WITH CARE, COMPETENCE, AND DILIGENCE.

21 (4) KEEP A RECORD OF ALL RECEIPTS, DISBURSEMENTS, AND
22 TRANSACTIONS MADE ON BEHALF OF THE PRINCIPAL.

23 (5) COOPERATE WITH ANY PERSON THAT HAS AUTHORITY TO MAKE
24 HEALTH-CARE DECISIONS FOR THE PRINCIPAL TO DO WHAT YOU KNOW

SENATE BILL 715

1 THE PRINCIPAL REASONABLY EXPECTS OR, IF YOU DO NOT KNOW THE
2 PRINCIPAL'S EXPECTATIONS, TO ACT IN THE PRINCIPAL'S BEST INTEREST.

3 (6) ATTEMPT TO PRESERVE THE PRINCIPAL'S ESTATE PLAN IF YOU
4 KNOW THE PLAN AND PRESERVING THE PLAN IS CONSISTENT WITH THE
5 PRINCIPAL'S BEST INTEREST.

TERMINATION OF AGENT'S AUTHORITY

7 YOU MUST STOP ACTING ON BEHALF OF THE PRINCIPAL IF YOU
8 LEARN OF ANY EVENT THAT TERMINATES THIS POWER OF ATTORNEY OR
9 YOUR AUTHORITY UNDER THIS POWER OF ATTORNEY. EVENTS THAT
10 TERMINATE A POWER OF ATTORNEY OR YOUR AUTHORITY TO ACT UNDER
11 A POWER OF ATTORNEY INCLUDE ALL OF THE FOLLOWING:

12 (1) DEATH OF THE PRINCIPAL.

13 (2) THE PRINCIPAL'S REVOCATION OF THE POWER OF ATTORNEY OR
14 YOUR AUTHORITY.

15 (3) THE OCCURRENCE OF A TERMINATION EVENT STATED IN THE
16 POWER OF ATTORNEY.

17 (4) THE PURPOSE OF THE POWER OF ATTORNEY IS FULLY
18 ACCOMPLISHED.

19 (5) IF YOU ARE MARRIED TO THE PRINCIPAL, A LEGAL ACTION IS
20 FILED WITH A COURT TO END YOUR MARRIAGE, OR FOR YOUR LEGAL
21 SEPARATION, UNLESS THE SPECIAL INSTRUCTIONS IN THIS POWER OF
22 ATTORNEY STATE THAT SUCH AN ACTION WILL NOT TERMINATE YOUR
23 AUTHORITY.

24 (6) IF YOU ARE THE PRINCIPAL'S DOMESTIC PARTNER AND YOUR
25 DOMESTIC PARTNERSHIP IS TERMINATED, UNLESS THE SPECIAL

SENATE BILL 715

1 INSTRUCTIONS IN THIS POWER OF ATTORNEY STATE THAT SUCH AN
2 ACTION WILL NOT TERMINATE YOUR AUTHORITY.

3 **LIABILITY OF AGENT**

4 THE MEANING OF THE AUTHORITY GRANTED TO YOU IS DEFINED IN
5 THE UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY ACT
6 IN CHAPTER 244 OF THE WISCONSIN STATUTES. IF YOU VIOLATE THE
7 UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY ACT IN
8 CHAPTER 244 OF THE WISCONSIN STATUTES OR ACT OUTSIDE THE
9 AUTHORITY GRANTED, YOU MAY BE LIABLE FOR ANY DAMAGES CAUSED
10 BY YOUR VIOLATION.

11 IF THERE IS ANYTHING ABOUT THIS DOCUMENT OR YOUR DUTIES
12 THAT YOU DO NOT UNDERSTAND, YOU SHOULD SEEK LEGAL ADVICE.

13 **OPTIONAL SIGNATURE OF AGENT**

14 I HAVE READ AND ACCEPT THE DUTIES AND LIABILITIES OF THE
15 AGENT AS SPECIFIED IN THIS POWER OF ATTORNEY.

16 Agent's signature

Date

17 (APPENDIX FOLLOWS)

18 **SECTION 8.** 701.0816 (28) of the statutes is created to read:

19 701.0816 **(28)** Access digital assets as provided under s. 112.12.

20 **(END)**