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.

AN ACT to amend 155.30 (3) (form) and 244.61 (form); and to create 54.20 (2)

(m), 112.12, 155.20 (9), 244.41 (1) (i), 244.43 (9m) and 701.0816 (28) of the statutes; relating to: creating the Revised Uniform Fiduciary Access to Digital 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:

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

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

Section 2. 112.12 of the statutes is created to read:


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

(2) Definitions. In this section:
(a) “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.

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

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

(d) “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.

(e) “Conservator” means a person appointed under s. 54.76 to manage the estate of a living individual.

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

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

2. The information is electronically stored 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.

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

(g) “Court” means the circuit court or judge assigned to exercise probate jurisdiction.

(h) “Custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of a user.
(i) “Designated recipient” means a person chosen by the user using an online tool to administer the user’s digital assets.

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

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

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

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

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

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

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

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

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

(s) “Personal representative” has the meaning given in s. 851.23, but also includes a special administrator.
(t) “Power of attorney” means a record that grants an agent authority to act in the place of a principal.

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

(v) “Protected person” means any of the following:

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

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

(w) “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.

(x) “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 defined in 18 USC 2510 (14).

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

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

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

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

(3) **Direction for Disclosure of Digital Assets.** (a) A user may allow or prohibit 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, in a will, trust,
power of attorney, or in any other type of inter vivos governing instrument, as defined in s. 700.27 (1) (c), or governing instrument, as defined in s. 854.01 (2).

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

(c) A user’s direction under par. (a) or (b) takes precedence over 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.

(4) TERMS OF SERVICE AGREEMENT. (a) This section 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 of the user.

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

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

1. The user.
2. Federal law.
3. A terms of service agreement if the user has not provided direction under sub. (3).

(5) PROCEDURE FOR DISCLOSING DIGITAL ASSETS. (a) When disclosing digital assets of a user under this section, the custodian may in its sole discretion provide a fiduciary or designated recipient with any of the following:
1. Full access to the user’s account.

2. Partial access to the user’s account that is sufficient to perform the tasks with which the fiduciary or designated recipient is charged.

3. A copy in a record of any digital asset that the user could have accessed if the user were alive, had full capacity, and had full access to the account on the date the custodian received the request for disclosure.

(b) A custodian may assess a reasonable administrative charge to a fiduciary or designated recipient for the cost of disclosing digital assets under this section.

(c) A custodian need not disclose under this section a digital asset deleted by the user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this section some, but not all, of the user’s digital assets, the custodian need not disclose the digital assets if segregation of the digital assets would impose an undue burden on the custodian. If the custodian refuses to disclose digital assets because the custodian believes the segregation of the digital assets imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose any of the following:

1. To the fiduciary or designated recipient, a subset of the user’s digital assets that is limited by date.

2. To the fiduciary or designated recipient, all of the user’s digital assets.

3. None of the user’s digital assets.

4. To the court for review in camera, all of the user’s digital assets.

(6) Disclosure of content of electronic communications; deceased user. If a deceased user consented or a court directs disclosure of the contents of electronic communications of a deceased user, the custodian shall disclose to the personal
representative of the user’s estate the content of an electronic communication sent
or received by the user if the personal representative gives the custodian all of the
following:

(a) A written request for disclosure in physical or electronic form.
(b) A certified copy of the death certificate of the user.
(c) A certified copy of the letters to administer the user’s estate or, if the
personal representative is a special administrator, a certified copy of the letters of
special administration.
(d) Unless the user provided direction using an online tool, a copy of the will,
trust, power of attorney, or other record evidencing the user’s consent to disclosure
of the content of electronic communications.
(e) If requested by the custodian, any of the following:
   1. A number, username, address, or other unique subscriber or account
identifier assigned by the custodian to identify the user’s account.
   2. Evidence linking the account to the user.
   3. A court order that includes all of the following findings:
      a. The user had a specific account with the custodian that is identifiable by the
         information specified in subd. 1.
      b. The disclosure of the content of electronic communications of the user does
         not violate 18 USC 2701 et seq., 47 USC 222, or other applicable law.
      c. Unless the user provided direction using an online tool, the user consented
to disclosure of the content of electronic communications.
      d. The disclosure of the content of electronic communications of the user is
         reasonably necessary for administration of the estate.
(7) DISCLOSURE OF OTHER DIGITAL ASSETS; DECEASED USER. Unless a deceased user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the user’s estate 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 personal representative gives the custodian all of the following:

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

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

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

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

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

2. Evidence linking the account to the user.

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

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

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

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

(8) DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS; 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 court, a custodian shall disclose to the agent the content of electronic communications if the agent gives the custodian all of the following:

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

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

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

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

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

2. Evidence linking the account to the principal.

(9) Disclosure of digital assets other than content of electronic communications; principal. Unless otherwise ordered by the court, directed by the principal, or provided in a power of attorney, a custodian shall disclose to an agent with specific authority over the principal’s digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and the principal’s digital assets, other than the content of electronic communications, if the agent gives the custodian all of the following:

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

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

(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect.
(d) If requested by the custodian, any of the following:

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

2. Evidence linking the account to the principal.

(10) Disclosure of digital assets held in trust; trustee is original user. Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee who is an original user of an account any digital asset of the account that is held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

(11) Disclosure of contents of electronic communications held in trust; trustee is not original user. Unless otherwise ordered by the 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 trust's account if the trustee gives the custodian all of the following:

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

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

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

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

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

(12) Disclosure of digital assets other than content of electronic communications; trustee is not original user. Unless otherwise ordered by the 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 all of the following:

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

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

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

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

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

2. Evidence linking the account to the trust.

(13) Disclosure of digital assets; conservator or guardian. (a) 1. After an opportunity for a hearing under s. 54.10, the court may grant a guardian access to the digital assets of an individual for whom a guardian has been appointed or for whom an application for the appointment of a guardian is pending.

2. After an opportunity for a hearing under s. 54.76, the court may grant a conservator access to the digital assets of an individual for whom a conservator has
been appointed or for whom an application for the appointment of a conservator is pending.

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

1. A written request for disclosure in physical or electronic form.
2. A certified copy of the court order that gives the guardian or conservator authority over the protected person’s digital assets.
3. If requested by the custodian, any of the following:
   a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person.
   b. Evidence linking the account to the protected person.

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

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

1. The duty of care.
2. The duty of loyalty.
3. The duty of confidentiality.

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

1. Except as otherwise provided in sub. (3), the applicable terms of service.
2. Other applicable law, including copyright law.

(c) A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, 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 digital assets of the decedent, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws.

(e) 1. A fiduciary with authority over the tangible personal property of a decedent, protected person, principal, or settlor has the right to access the tangible personal property and any digital asset stored in the tangible personal property.
2. A fiduciary with authority over the tangible personal property of a decedent, protected person, principal, or settlor is an authorized user of digital assets stored in the tangible personal property for the purpose of computer fraud and unauthorized computer access laws.

(f) A custodian may disclose information in a user’s 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 all of the following:

1. If the user is deceased, a certified copy of the death certificate of the user.
2. Any of the following that grants the fiduciary authority over the user’s account:
   a. A certified copy of the fiduciary’s letters to administer the user’s estate.
   b. A certified copy of the letters of special administration.
   c. A certified copy of a court order.
   d. An original or copy of a power of attorney.
   e. A copy of the trust instrument or a certification of the trust under s. 701.1013.
3. If requested by the custodian, any of the following:
   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. A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subd. 3. a.

(15) Custodian Compliance and Immunity. (a) Not later than 60 days after receipt of the information required under subs. (6) to (13), as applicable, a custodian shall comply with a request under this section 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 court for an order directing the custodian to comply with the request.
(b) A court shall include in an order directing a custodian to comply with a request made under this section a finding that compliance with the request does not violate 18 USC 2702.

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

(d) A custodian may deny a request under this section 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 after the receipt of the fiduciary’s request.

(e) This section does not limit a custodian’s ability to obtain or to require a fiduciary or designated recipient requesting disclosure or termination under this section to obtain a court order that does all of the following:
   1. Specifies that an account belongs to the protected person or principal.
   2. Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure.
   3. Contains any findings required by law other than this section.

(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 section.

(16) **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.

(17) **Relation to Electronic Signatures in Global and National Commerce Act.** This section modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq., but does not modify, limit, or
supersede section 101 (c) of that act, 15 USC 7001 (c), or authorize electronic delivery
of any of the notices described in section 103 (b) of that act, 15 USC 7003 (b).

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

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

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

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

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

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

(c) This section 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. 155.20 (9) of the statutes is created to read:

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

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

155.30 (3) (form)

POWER OF ATTORNEY FOR HEALTH CARE

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

CREATION OF POWER OF ATTORNEY

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

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

DESIGNATION OF HEALTH CARE AGENT

If I am no longer able to make health care decisions for myself, due to my incapacity, I hereby designate.... (print name, address and telephone number) to be my health care agent for the purpose of making health care decisions on my behalf. If he or she is ever unable or unwilling to do so, I hereby designate.... (print name, address and telephone number) to be my alternate health care agent for the purpose of making health care decisions on my behalf. Neither my health care agent nor my alternate health care agent whom I have designated is my health care provider, an employee of my health care provider, an employee of a health care facility in which I am a patient or a spouse of any of those persons, unless he or she is also my relative.

For purposes of this document, “incapacity” exists if 2 physicians or a physician and a psychologist who have personally examined me sign a statement that specifically expresses their opinion that I have a condition that means that I am unable to receive and evaluate information effectively or to communicate decisions to such an extent
that I lack the capacity to manage my health care decisions. A copy of that statement
must be attached to this document.

GENERAL STATEMENT OF AUTHORITY GRANTED

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

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

LIMITATIONS ON MENTAL HEALTH TREATMENT

My health care agent may not admit or commit me on an inpatient basis to an
institution for mental diseases, an intermediate care facility for persons with an
intellectual disability, a state treatment facility or a treatment facility. My health
care agent may not consent to experimental mental health research or
SENATE BILL 715

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

ADMISSION TO NURSING HOMES OR COMMUNITY-BASED RESIDENTIAL FACILITIES

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

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

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

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

PROVISION OF A FEEDING TUBE

If I have checked “Yes” to the following, my health care agent may have a feeding tube withheld or withdrawn from me, unless my physician has advised that, in his or her professional judgment, this will cause me pain or will reduce my comfort.

If I have checked “No” to the following, my health care agent may not have a feeding tube withheld or withdrawn from me.

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

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

If I have not checked either “Yes” or “No” immediately above, my health care agent may not have a feeding tube withdrawn from me.
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) –
2) –

3) –

INSPECTION AND DISCLOSURE OF
INFORMATION RELATING TO MY PHYSICAL
OR MENTAL HEALTH

Subject to any limitations in this document, my health care agent has the
authority to do all of the following:

(a) Request, review and receive any information, oral or written, regarding my
physical or mental health, including medical and hospital records.

(b) Execute on my behalf any documents that may be required in order to obtain
this information.

(c) Consent to the disclosure of this information.

(d) Access my digital assets, other than the content of my electronic
communication, and catalogues of my electronic communications.

(The principal and the witnesses all must sign the document at the same time.)

SIGNATURE OF PRINCIPAL
(person creating the power of attorney for health care)

Signature.... Date....

(The signing of this document by the principal revokes all previous powers of
attorney for health care documents.)

STATEMENT OF WITNESSES

I know the principal personally and I believe him or her to be of sound mind and
at least 18 years of age. I believe that his or her execution of this power of attorney
for health care is voluntary. I am at least 18 years of age, am not related to the
principal by blood, marriage, or adoption, am not the domestic partner under ch. 770
of the principal, and am not directly financially responsible for the principal's health care. I am not a health care provider who is serving the principal at this time, an employee of the health care provider, other than a chaplain or a social worker, or an employee, other than a chaplain or a social worker, of an inpatient health care facility in which the declarant is a patient. I am not the principal’s health care agent. To the best of my knowledge, I am not entitled to and do not have a claim on the principal’s estate.

Witness No. 1:
(print) Name.... Date....
Address....
Signature....

Witness No. 2:
(print) Name.... Date....
Address....
Signature....

STATEMENT OF HEALTH CARE AGENT AND ALTERNATE HEALTH CARE AGENT

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

Agent’s signature....
Address....
Alternate’s signature....
Address....
Failure to execute a power of attorney for health care document under chapter 155 of the Wisconsin Statutes creates no presumption about the intent of any individual with regard to his or her health care decisions.

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

ANATOMICAL GIFTS (optional)

Upon my death:

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

.... I wish to donate any needed organ or part.

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

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

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

Signature....  Date....

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

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

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

244.43 (9m) Access a catalogue of electronic communications, as defined in s. 112.12 (2) (d), sent or received by the principal, and the principal’s digital assets, as defined in s. 112.12 (2) (j), other than the content of electronic communications, as defined in s. 112.12 (2) (f).
SENATE BILL 715

SECTION 7. 244.61 (form) of the statutes is amended to read:

244.61 (form)

WISCONSIN STATUTORY FORM

POWER OF ATTORNEY

FOR FINANCES AND PROPERTY

IMPORTANT INFORMATION

THIS POWER OF ATTORNEY AUTHORIZES ANOTHER PERSON (YOUR AGENT) TO MAKE DECISIONS CONCERNING YOUR PROPERTY FOR YOU (THE PRINCIPAL). YOUR AGENT WILL BE ABLE TO MAKE DECISIONS AND ACT WITH RESPECT TO YOUR PROPERTY (INCLUDING YOUR MONEY) WHETHER OR NOT YOU ARE ABLE TO ACT FOR YOURSELF. THE MEANING OF AUTHORITY OVER SUBJECTS LISTED ON THIS FORM IS EXPLAINED IN THE UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY ACT IN CHAPTER 244 OF THE WISCONSIN STATUTES.

THIS POWER OF ATTORNEY DOES NOT AUTHORIZE THE AGENT TO MAKE HEALTH−CARE DECISIONS FOR YOU.

YOU SHOULD SELECT SOMEONE YOU TRUST TO SERVE AS YOUR AGENT. UNLESS YOU SPECIFY OTHERWISE, GENERALLY THE AGENT'S AUTHORITY WILL CONTINUE UNTIL YOU DIE OR REVOKE THE POWER OF ATTORNEY OR THE AGENT RESIGNS OR IS UNABLE TO ACT FOR YOU.

YOUR AGENT IS ENTITLED TO REASONABLE COMPENSATION UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS.

THIS FORM PROVIDES FOR DESIGNATION OF ONE AGENT. IF YOU WISH TO NAME MORE THAN ONE AGENT YOU MAY NAME A COAGENT IN THE SPECIAL INSTRUCTIONS. COAGENTS ARE NOT REQUIRED TO ACT
TOGETHER UNLESS YOU INCLUDE THAT REQUIREMENT IN THE SPECIAL INSTRUCTIONS.

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

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

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

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

DESIGNATION OF AGENT

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

Name of agent: ....

Agent’s address: ....

Agent’s telephone number: ....

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)
If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of successor agent: ....

Successor agent’s address: ....

Successor agent’s telephone number: ....

If my successor agent is unable or unwilling to act for me, I name as my 2nd successor agent:

Name of 2nd successor agent: ....

Second successor agent’s address: ....

Second successor agent’s telephone number: ....

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney for Finances and Property Act in chapter 244 of the Wisconsin statutes:

INITIAL each subject you want to include in the agent’s general authority.

.... Real property

.... Tangible personal property

.... Stocks and bonds

.... Commodities and options

.... Banks and other financial institutions

.... Operation of entity or business

.... Insurance and annuities

.... Estates, trusts, and other beneficial interests

.... Claims and litigation

.... Personal and family maintenance

.... Benefits from governmental programs or civil or military service
... Retirement plans

... Taxes

LIMITATION ON AGENT'S AUTHORITY

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

ACCESS TO DIGITAL ASSETS

If I have checked “Yes” to the following, my agent may access the content of electronic communications on my behalf. If I have checked “No” to the following, my 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.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions in the following space ....

EFFECTIVE DATE

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

NOMINATION OF GUARDIAN (OPTIONAL)

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

Name of nominee for guardian of my estate: ....

Nominee’s address: ....

Nominee’s telephone number: ....

Name of nominee for guardian of my person: ....
SENATE BILL 715

1 Nominee’s address: ....
2 Nominee’s telephone number: ....

RELIANCE ON THIS POWER OF ATTORNEY FOR FINANCES AND PROPERTY

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

SIGNATURE AND ACKNOWLEDGMENT

Your signature .... Date ....

Your name printed ....
Your address ....
Your telephone number ....
State of ....
County of ....

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

(Seal, if any)

Signature of notary ....
My commission expires: ....
This document prepared by: ....

IMPORTANT INFORMATION FOR AGENT

AGENT’S DUTIES

WHEN YOU ACCEPT THE AUTHORITY GRANTED UNDER THIS POWER OF ATTORNEY, A SPECIAL LEGAL RELATIONSHIP IS CREATED BETWEEN YOU AND THE PRINCIPAL. THIS RELATIONSHIP IMPOSES UPON YOU
LEGAL DUTIES THAT CONTINUE UNTIL YOU RESIGN OR THE POWER OF ATTORNEY IS TERMINATED OR REVOKED. YOU MUST DO ALL OF THE FOLLOWING:

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

(2) ACT IN GOOD FAITH.

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

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

.... (principal’s name) by .... (your signature) as agent

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

(1) ACT LOYALLY FOR THE PRINCIPAL’S BENEFIT.

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

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

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

(5) COOPERATE WITH ANY PERSON THAT HAS AUTHORITY TO MAKE HEALTH-CARE DECISIONS FOR THE PRINCIPAL TO DO WHAT YOU KNOW
THE PRINCIPAL REASONABLY EXPECTS OR, IF YOU DO NOT KNOW THE PRINCIPAL'S EXPECTATIONS, TO ACT IN THE PRINCIPAL'S BEST INTEREST.

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

TERMINATION OF AGENT'S AUTHORITY

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

(1) DEATH OF THE PRINCIPAL.

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

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

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

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

(6) IF YOU ARE THE PRINCIPAL'S DOMESTIC PARTNER AND YOUR DOMESTIC PARTNERSHIP IS TERMINATED, UNLESS THE SPECIAL
INSTRUCTIONS IN THIS POWER OF ATTORNEY STATE THAT SUCH AN ACTION WILL NOT TERMINATE YOUR AUTHORITY.

LIABILITY OF AGENT

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

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

OPTIONAL SIGNATURE OF AGENT

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

Agent’s signature .... Date ....

(APPENDIX FOLLOWS)

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

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

(END)