



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2015 Assembly Bill 695

**Assembly Substitute
Amendment 1, as Amended**

Memo published: February 11, 2016 *Contact:* Jessica Karls-Ruplinger, Deputy Director (266-2230)

2015 Assembly Bill 695 and Assembly Substitute Amendment 1 generally adopt the Revised Uniform Fiduciary Access to Digital Assets Act, as recommended by the National Conference of Commissioners on Uniform State Laws, which governs the disclosure of digital property to a fiduciary. This memorandum describes: (1) Assembly Substitute Amendment 1; and (2) Assembly Amendment 1 to Assembly Substitute Amendment 1.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 creates provisions governing the disclosure of digital property to a fiduciary. “Digital property” means an electronic record in which a person has a right or interest, but not including underlying property or an underlying liability unless the property or liability is itself an electronic record.

The substitute amendment creates a priority system for determining the disclosure of digital property. First, a person may use an online tool¹ to direct the disclosure of his or her digital property to a designated recipient. A direction using an online tool overrides a contrary direction by the person in a will, trust, power of attorney, or any other governing instrument. Second, if the person has not used an online tool, the person may direct disclosure of his or her digital property in a will, trust, power of attorney, or any other governing instrument. A person’s direction in an online tool or governing instrument overrides a contrary provision in a terms of service agreement.

¹ Under the substitute amendment, “online tool” means a setting provided by a custodian that allows the user, by an agreement between the custodian and user that is distinct from the user’s assent to the terms of service, to provide directions for disclosure or nondisclosure of digital property to a designated recipient. A “custodian” is a person that carries, maintains, processes, receives, or stores a user’s digital property.

In addition, the substitute amendment contain various provisions governing the disclosure of a digital property, including the content of electronic communications,² to the following fiduciaries: (1) personal representative of a deceased person's estate; (2) agent under a power of attorney; (3) trustee; and (4) conservator or guardian of a protected person.

The substitute amendment requires a custodian to disclose a person's digital property to a fiduciary if the fiduciary provides certain information to the custodian. For example, a custodian must disclose a deceased person's digital property (other than content of electronic communications) to a personal representative if the personal representative provides certain information, including one of the following documents that establishes the personal representative's authority over the deceased person's digital property:

- A certified copy of the letters of appointment of the personal representative or special administrator.
- A summary proceeding or other court order.
- A transfer by affidavit.

In addition, under the substitute amendment, a fiduciary may request a custodian to terminate a person's account. A request for termination must be accompanied by certain information, including, for example, any of the following that grants the fiduciary authority over the person's account:

- A certified copy of the letters of appointment of a personal representative.
- A certified copy of the letters of special administration.
- A certified copy of a summary proceeding or other court order.
- A transfer by affidavit.
- An original or copy of a power of attorney and a certification by the agent that the power of attorney is in effect.
- A certification of the trust under s. 701.1013, Stats.

ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 1 to Assembly Substitute Amendment 1 makes changes to the information provided by a fiduciary to a custodian to access digital property or to terminate an account in the two examples described above. First, under the amendment, a custodian must

² Under the substitute amendment, "content of an electronic communication" means information concerning the substance or meaning of a communication if the information: (1) was sent or received by the person; (2) 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; and (3) is not readily accessible to the public.

disclose a deceased person's digital property (other than content of electronic communications) to a personal representative if the personal representative provides certain information, including one of the following documents that establishes the personal representative's authority over the deceased person's digital property:

- A certified copy of the letters of appointment of the personal representative or special administrator.
- **A certified copy of a summary proceeding order under s. 867.01 or 867.02, Stats.**
- **An original or copy of an affidavit under s. 867.03, Stats.**
- **An original or copy of an application under s. 867.046, Stats.**

Second, under the amendment, a request to terminate a person's account must be accompanied by certain information, including any of the following that grants the fiduciary authority over the person's account:

- A certified copy of the letters of appointment of a personal representative.
- A certified copy of the letters of special administration.
- **A certified copy of a summary proceeding order under s. 867.01 or 867.02, Stats.**
- **An original or copy of an affidavit under s. 867.03, Stats.**
- **An original or copy of an application under s. 867.046, Stats.**
- An original or copy of a power of attorney and a certification by the agent that the power of attorney is in effect.
- A certification of the trust under s. 701.1013, Stats.

BILL HISTORY

On February 2, 2016, Assembly Substitute Amendment 1 was offered by Representatives Sargent and R. Brooks. On February 10, 2016, Assembly Amendment 1 to Assembly Substitute Amendment 1 was offered by Representatives Sargent and R. Brooks.

On February 11, 2016, the Assembly Committee on Judiciary recommended adoption of Assembly Amendment 1 to Assembly Substitute Amendment 1; adoption of Assembly Substitute Amendment 1, as amended; and passage of Assembly Bill 695, as amended, on votes of Ayes, 9; Noes, 0.

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