

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
COMMITTEE REPORT
1350 Pennsylvania Avenue, N.W., Washington, DC 20004

To: Members of the Council of the District of Columbia

From: Councilmember Charles Allen *CA*
Chairperson, Committee on the Judiciary and Public Safety

Date: November 23, 2020

Subject: Report on B23-0141, the “Uniform Fiduciary Access to Digital Assets Act of 2020”

The Committee on the Judiciary and Public Safety, to which Bill 23-0141, the “Uniform Fiduciary Access to Digital Assets Act of 2020”, was referred, reports favorably thereon, and recommends approval by the Council of the District of Columbia.¹

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¹ As introduced, the short title of B23-0141 was the “Uniform Fiduciary Access to Digital Assets Act of 2019”.

STATEMENT OF PURPOSE AND EFFECT

I. Purpose and Effect

Bill 23-0141, the “Uniform Fiduciary Access to Digital Assets Act of 2019”, was introduced on February 12, 2019 by Committee Chairperson Charles Allen and Councilmembers Jack Evans, David Grosso, and Brianne K. Nadeau, and was referred to the Committee on February 19, 2019. Substantially similar legislation, B22-0199, the “Uniform Fiduciary Access to Digital Assets Act of 2017”, was introduced on March 21, 2017 by Committee Chairperson Allen and Councilmembers Anita Bonds, Jack Evans, David Grosso, and Brianne K. Nadeau, and was referred to the Committee on the same day. The Committee held a public hearing on B22-0199 on June 1, 2017² and is therefore now incorporating that hearing record into the record for B23-0141 pursuant to Council Rule 501(a)(2).

B23-0141 enacts the Revised Uniform Fiduciary Access to Digital Assets Act (“RUFADAA”), as drafted by the Uniform Law Commission (“ULC”) in 2015.³ ULC drafted the RUFADAA to accomplish two broad goals. First, the legislation allows “fiduciaries the legal authority to manage digital assets and electronic communications in the same way that they manage tangible assets and financial accounts.”⁴ Second, it provides entities that manage and store digital assets and electronic communications—including companies like Google, Facebook, and Twitter, as well as banks or investment brokers that manage financial assets electronically—“legal authority to deal with the fiduciaries of their users, while respecting users’ reasonable expectation of privacy for personal communications.”⁵

The bill distinguishes between (1) the *content* of electronic communications, like email or text messages, (2) a pen register-like *catalogue* of electronic communications, detailing only the time, date, and contact information of sender and recipient of, for example, email or text messages, and (3) other digital assets, including virtual currency like Bitcoin or photos stored on a website.⁶ The bill provides a means for District residents to direct whether and to whom each of these may be disclosed and, in the absence of clear direction, sets default rules that, insofar as access is necessary to administer an estate, make it least burdensome for a fiduciary to access digital assets, which are most analogous to tangible assets that fiduciaries have traditionally managed, and most burdensome for a fiduciary to view the content of electronic communications.

RUFADAA has been adopted in 46 states. The intent of any ULC-drafted uniform law is to create a consistent body of law across all states, and, accordingly, the Committee Print makes only minor, primarily technical changes, to B23-0141 as introduced. The changes to the introduced

² Committee on the Judiciary and Public Safety, *Public Hearing on B22-0199, the “Uniform Fiduciary Access to Digital Assets Act of 2017”* (June 1, 2017), http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=3993.

³ See *Fiduciary Access to Digital Assets Act, Revised*, Uniform Law Commission, <https://www.uniformlaws.org/committees/community-home?CommunityKey=f7237fc4-74c2-4728-81c6-b39a91ecd22>.

⁴ *Revised Uniform Fiduciary Access to Digital Assets Act (2015)*, National Conference of Commissioners on Uniform State Laws (March 8, 2016) 1.

⁵ *Id.*

⁶ *Supra* note 1 (written testimony of Naomi Cahn, Professor, George Washington University Law School), https://lims.dccouncil.us/downloads/LIMS/37700/Hearing_Record/B22-0199-HearingRecord1.pdf.

version serve to conform the bill to the Council’s drafting conventions and ensure consistency with existing District law.

II. Background

State laws have long provided procedures for settling an estate after a death or for allowing a fiduciary to manage the assets of someone who no longer can manage them on their own. In the District, Titles 18 to 21 of the D.C. Official Code govern how an estate is administered after death and the rights and responsibilities of fiduciaries, and other third parties, who are tasked with managing a decedent’s estate or another’s assets. However, these parts of the Code, and similar provisions in other states, were developed with tangible assets in mind. In these simpler times, after a death, relatives or other fiduciaries could walk through the decedent’s home to identify and divvy up personal property and comb through quarterly statements kept in manilla folders to determine which bank or investment company the fiduciary should contact to settle accounts. Today, as more and more of our lives are conducted digitally, those quarterly statements may exist only as email attachments organized in an inbox subfolder—and some accounts may be with financial institutions that only exist online, like Venmo, or held in a currency that was mined from an algorithm, like Bitcoin. The family photo album may only be accessible with a password, in the cloud.

To provide fiduciaries with a consistent set of rules to deal with digital assets across the country, ULC developed RUFADAA. RUFADAA addresses digital assets—like the family photo album saved to the cloud or digital currency like Bitcoins⁷—that are clearly analogous to tangible assets contemplated in a will or similar instrument. If a will states that financial assets or family photographs must be split equally among surviving children, a fiduciary must have access to those assets, whether they are physical or digital. However, companies that maintain digital assets, like Google or Facebook (called “custodians” in the model law), have expressed concerns that federal electronic privacy laws could be read to prohibit disclosing digital assets to a fiduciary.⁸

RUFADAA clarifies that fiduciaries can indeed manage digital assets—consistent with other District laws concerning wills and estates—and that a custodian can allow a fiduciary to access those assets, upon a written request, if it is necessary to administer an estate. RUFADAA takes special care to address whether and how a custodian should disclose electronic communications⁹, which a fiduciary also may need to access in order to administer the estate. Access to electronic communication can help a fiduciary determine which bank to contact to settle assets, and electronic communication can also alert a fiduciary to, for example, a recurring

⁷ The definition of “digital asset” in RUFADAA does *not* include underlying assets, like funds in an online bank account, where “records may exist in both electronic and non-electronic formats.” However, the model law leaves the definition of digital asset sufficiently broad to include “types of electronic records currently in existence and yet to be invented.” *Supra* note 4, at 6

⁸ Letter from Ron Barnes, Head of State Affairs, Google to Ben Orzeske, Chief Counsel, Uniform Law Commission, (Oct. 13, 2015), on file with the Committee.

⁹ Consistent with the Electronic Communications Privacy Act, electronic communications include only private communications. *Supra* note 4, at 6-7. A Twitter user’s public posts would not be an electronic communication for purposes of RUFADAA, but a direct message that is only visible to one user, or a specified group of users, would be an electronic communication under the model law. Additionally, electronic communications do not include those made through an employer-based email system that is used in the ordinary course of business. *Id.*

autopayment for utilities or a gym membership that the fiduciary will want to cancel. RUFADAA further differentiates between the *content* of electronic communications and a “*catalogue* of electronic communications”—that is, information about when and to and from whom an electronic communication was sent.

While access to some digital assets may be fairly straightforward, disclosure of electronic communications raises privacy concerns, even after death. RUFADAA addresses privacy concerns in a few ways. First, the model law provides a mechanism for a user of a custodian’s service to set up an “online tool” that will direct the custodian whether to disclose any information at all, which information may be disclosed, and to whom to disclose information.¹⁰ The ULC’s clear intent was for the RUFADAA, and state laws, like the Committee Print, that adopt RUFADAA, to prioritize a user’s direction in an online tool over all other interpretations of the user’s intent.¹¹ Second, if a user has not set up an online tool, then a user’s directions in a will or similar instrument or, if there is no will, a custodian’s terms of service, will direct whether and what electronic communications can be disclosed. And third, RUFADAA sets a higher bar for disclosure of the content of electronic communications than for a mere catalogue of electronic communications, because it is unlikely that a fiduciary will need to access the content of electronic communications to identify assets which need to be disposed of or ongoing payments owed. For example, if a fiduciary notices emails from Bank of America on the same day each month—which would be included in a catalogue of electronic communications—that could indicate it includes a monthly statement, signaling the fiduciary to contact Bank of America to settle the account, without any need to read the content of the email from Bank of America; similarly, regular emails from Pepco should lead a fiduciary to contact Pepco to cut off autopayments when appropriate.¹² If a situation arises where a fiduciary believes that the content of an electronic communication is absolutely necessary to administer an estate, RUFADAA allows for the possibility of disclosure, but the model law also allows a custodian of the electronic communication to request additional information before disclosing the content of electronic communications, including a court order determining that disclosure of the content is “reasonably necessary for administration of the estate.”¹³

Additionally, RUFADAA clarifies access to a user’s digital assets specific to situations where the user has entered into a power of attorney, when the digital assets are in a trust, and when a conservator has been assigned. Generally, these provisions mirror the RUFADAA’s inclination to provide additional protections for the content of electronic communications. When a user has entered into a power of attorney, the principal should be given access to digital assets *other than* the content of electronic communications through a process similar to a fiduciary’s request; a custodian may only disclose the content of electronic communication if the power of attorney

¹⁰ For example, Google’s Inactive Account Manager service allows a user to identify a “trusted contact” who will receive access to content from specified Google services after the user’s account has been inactive for a specified period.

¹¹ *Supra* note 6, (written statement of Professor Naomi Cahn) (“If the internet provider has established an online tool for addressing issues of fiduciary access, and the user has filled out that form, then that controls the fiduciary’s access to that particular asset.”); *supra* note 4, at 11 (noting that § 21-2504(a) “gives top priority to a user’s wishes as expressed using an online tool.”)

¹² A catalogue of communications does not include the subject line of an email, so a fiduciary would have to deduce from the timing of emails that they indicate the existence of an account. The subject of an email is considered *content* of an electronic communication.

¹³ Amendatory § 21-2507 of Uniform Fiduciary Access to Digital Assets Act of 2020, Committee Print of 23-0141.

explicitly grants the principal such access. For digital assets held in a trust, a trustee has access to the content of electronic communication only to the extent that the trustee can show that the trust agreement provided consent to disclosure; a trustee has easier access to other digital assets held in a trust. Finally, conservators should have access to a protected person's digital assets, except that the conservator must show specific authorization from a court to access the content of electronic communications.

RUFADAA also makes clear that a fiduciary has the same duties of care, loyalty, and confidentiality when managing digital assets as it would have when managing tangible assets. And the model legislation also clarifies that a fiduciary has the same limits on its management of digital assets that the original user would have had. For example, a fiduciary is bound by the custodian's terms of service in the same way that a user would be, and a fiduciary cannot delete a digital asset if it would have been illegal for the user to do so. RUFADAA also requires a custodian to respond to a request for access to a digital asset within 60 days and provides a custodian with immunity from liability for actions taken, in good faith, to comply with the model legislation.

III. Committee Reasoning

To ensure that District residents have the same protections as residents of the other 46 states that have already adopted RUFADAA, the Committee Print adds a new Chapter 25 to Title 21 of the D.C. Official Code, adopting RUFADAA with only minor changes to the introduced version. Because this is a developing area of law, adopting language similar to that adopted across the country will allow courts in the District to look to interpretations of other state courts for guidance in interpreting the District's statute. However, the Committee also encourages ULC to monitor implementation of RUFADAA as it has been adopted around the country, to ensure that it remains responsive to privacy concerns as technology develops and more of the paper trail of our lives becomes digital.

The Committee further encourages District agencies, particularly those who support vulnerable communities, to inform District residents about how they can protect their digital assets and privacy in perpetuity. In particular, the Committee encourages the Department on Aging and Community Living to ensure that any estate planning advice it provides to the public, including through contractors, includes information about the Committee Print's new protections for residents' privacy and clarity for fiduciaries administering estates that include digital assets.

At the Committee's hearing on B22-0199, only one witness raised any concerns about the substance of RUFADAA. A representative from The Trevor Project ("TTP") raised concerns about the possibility of confidential information from TrevorSpace, TTP's social media program, being released posthumously. TTP is "the leading national organization providing crisis intervention and suicide prevention services to LGBTQ youth ages 13-24."¹⁴ TTP's concerns centered on the need for TrevorSpace users to feel confident that any information they share with TTP or other TrevorSpace users will remain completely confidential—including from a parent or guardian acting as a fiduciary. It is likely that TrevorSpace users were TrevorSpace users precisely because they did not want to be "outed" to their parent or guardian, and the Committee believes that the

¹⁴ *Supra* note 2 (written testimony of Amy Loudermilk, Government Affairs Director, The Trevor Project).

Print does not require a custodian to provide a fiduciary—even a parent or guardian—access to confidential information if the user did not intend for it to be disclosed.

The Committee believes that the protections for user privacy built into RUFADAA are sufficient to protect sensitive content like information that could be posted through TTP’s website. TTP can include in its terms of service that it will never disclose any information on the website—including the existence or absence of an account—to any third party, including a fiduciary. TTP can also create an online tool that would allow a user to prohibit disclosure of some or all digital assets, or the user could identify a trusted person to whom information could be disclosed, other than a fiduciary.¹⁵ And even if a fiduciary made a request to TTP for information, despite TTP’s terms of service or a user’s direction in an online tool, TTP, as a custodian, would be able to request a court order finding that the information is necessary to administer the estate. The Committee is aware of only one court interpretation of RUFADAA, but in that instance a New York state court, considering a request from a fiduciary “to access his deceased spouse’s Google email, contacts[,] and calendar,” required Google to provide the fiduciary with contacts and calendar information but not the *content* of their spouse’s email.¹⁶

The result in *In re Estate of Serrano* reassures the Committee that courts are likely to interpret RUFADAA consistent with ULC’s and the Committee’s intent to tightly guard privacy while facilitating efficient administration of an estate that includes digital assets. However, the Committee also notes that the New York court only had the opportunity to make this proper interpretation because Google resisted a fiduciary’s request to disclose the content of electronic communications. The Committee Print, consistent with RUFADAA, does not *prohibit* disclosure of the content of electronic communication, the most well-protected type of digital asset, or other digital assets, but rather allows a custodian to decline to disclose. The Committee believes that custodians’ strong market incentive to ensure users’ privacy¹⁷ likely will protect District residents’ privacy, but the Committee encourages ULC and the Office of the Attorney General to continue to monitor implementation. The Committee further notes that even if the District were to provide additional statutory protections for users’ privacy, it would only apply to users in the District; consistent with the general intent of a uniform law, the Committee believes it will be most effective for ULC to identify potential problems with implementation and recommend a uniform solution to the states that have adopted RUFADAA. In particular, the Committee has encouraged ULC and TTP to continue to discuss the potential impact of RUFADAA—and, by extension, the Committee Print—on TTP’s users.

LEGISLATIVE HISTORY

March 21, 2017 B22-0199 is introduced by Committee Chairperson Allen and Councilmembers Bonds, Evans, Grosso, and Nadeau.

¹⁵ The Committee Print allows a user to identify a “designated recipient,” defined as “a person chosen by a user using an online tool to administer digital assets of the user.” *Supra* note 13 at amendatory § 21-2502.

¹⁶ *In re Estate of Serrano*, 56 Misc. 3d 497, 54 N.Y.S.3d 564 (N.Y. Sur. 2017), http://www.courts.state.ny.us/Reporter/3dseries/2017/2017_27200.htm

¹⁷ For example, Apple has consistently refused law enforcement requests to unlock iPhones, even in high profile investigations alleging links to terrorism. *E.g.*, Sara Morrison, *Why Attorney General Bill Barr is Mad at Apple*, VOX (May 18, 2020), <https://www.vox.com/recode/2020/5/18/21262731/fbi-apple-unlock-iphone-encryption-bill-barr-alshamrani>.

March 21, 2017	B22-0199 is referred to the Committee on the Judiciary and Public Safety.
March 24, 2017	Notice of Intent to Act on B22-0199 is published in the <i>District of Columbia Register</i> .
May 12, 2017	Notice of Public Hearing on B22-0199 is published in the <i>District of Columbia Register</i> .
June 1, 2017	Public Hearing on B22-0199 is held by the Committee on the Judiciary and Public Safety.
February 12, 2019	B23-0141 is introduced by Committee Chairperson Allen and Councilmembers Evans, Grosso, and Nadeau.
February 19, 2019	B23-0141 is referred to the Committee on the Judiciary and Public Safety.
February 22, 2019	Notice of Intent to Act on B23-0141 is published in the <i>District of Columbia Register</i> .
November 23, 2020	Consideration and vote on B23-0141 by the Committee on the Judiciary and Public Safety.

POSITION OF THE EXECUTIVE

The Committee did not receive testimony or comments from the Executive.

ADVISORY NEIGHBORHOOD COMMISSION COMMENTS

The Committee did not receive testimony or comments from Advisory Neighborhood Commissions.

WITNESS LIST AND HEARING RECORD

On Thursday, June 1, 2017, the Committee on the Judiciary and Public Safety held a public hearing on B22-0191, the “Uniform Fiduciary Access to Digital Assets Act of 2017.” A video recording of the public hearing can be viewed at http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=3993. The following witnesses testified at the hearing or submitted statements to the Committee:

Public Witnesses

Benjamin Orzeske – Chief Counsel, National Conference of Commissioners on State Uniform Laws

Mr. Orzeske testified in support of the bill. He noted that the bill is unusual for uniform laws, in that it has been adopted very quickly; at the time of the hearing, 33 states had adopted the model bill, in a period of slightly more than a year and a half. Mr. Orzeske noted the importance of the “online tool” that allows users to make clear their intent and ensure privacy in electronic communications. He emphasized that during the drafting of the model bill, questions about privacy were at the top of the drafters’ minds—noting that most people view email, and other electronic communications, differently than regular mail; accordingly, the content of electronic communications are protected. He explained that typically a catalogue of electronic communications is all that a fiduciary would need to identify accounts. Mr. Orzeske noted that the model law was intended to be broad enough to allow application to future technology, but he said that it is possible that the law would need to be amended in the future to account for technology changes.

Naomi Cahn – Professor of Law, The George Washington University Law School

Professor Cahn testified in support of the bill, noting that she was one of the primary drafters of the model law. Professor Cahn noted that without protections, such as in the law, a deceased or incapacitated person’s accounts could be hacked, or their identity could be stolen. She also pointed out that the law provides easy mechanisms to restrict fiduciary access. Professor Cahn noted that most people die without a will, in particular low-income residents whose families can least afford to lose money in the estate if they do not have the ability to cut off recurring payments, as would be allowed under the bill. Professor Cahn testified that the model bill was drafted with the input of academics, businesses, and internet service providers. She noted that even when a digital asset is disclosed, it is only to a fiduciary who has obligations to protect information that is disclosed.

Giannina Lynn – Attorney at Law, The Law Office of Gina Lynn

Ms. Lynn testified in support of the bill, noting it is an important addition to estate planning. She said that after receiving seminars about the model law, she and other attorneys who assist clients with estate planning have begun to include provisions about the proper administration of digital assets. Ms. Lynn also noted technical changes to the bill to align with terms typically used in the District.

Amy Loudermilk – Government Affairs Director, The Trevor Project

Ms. Loudermilk testified to concerns that The Trevor Project (“TTP”) had about the bill, while not taking a position on the underlying goals of the bill. Ms. Loudermilk noted that the rate of suicide attempts among LGBTQ youth is 4 times higher than straight youth. Ms. Loudermilk proposed an amendment that would exempt TTP from the bill, noting concerns that the bill could allow disclosure of information from TTP’s website and social media service to which a minor would not have consented.

Government Witness

James C. McKay, Jr. – Chair, District of Columbia Uniform Law Commission

Mr. McKay testified in support of the bill. He noted that 33 states had adopted the bill, and it had been introduced in 10 others. He said that the bill goes as far as possible to allow a user to maintain the privacy of their communications. He testified that the Taxation and Estates, Trusts, and Probate Law Sections of the D.C. Bar support the bill.

IMPACT ON EXISTING LAW

B23-0141 amends Title 21 of the District of Columbia Official Code to add a new Chapter 25 to enact the Revised Uniform Fiduciary Access to Digital Assets Act. This model law will allow holders of accounts with digital assets to give access to these accounts to fiduciaries, including executors, agents, conservators, and trustees; provide default rules governing access by fiduciaries to these accounts; and provide immunity from liability for custodians of accounts that comply with a fiduciary's apparent authorized request for access.

FISCAL IMPACT

The Committee adopts the fiscal impact statement of the District's Chief Financial Officer.

SECTION-BY-SECTION ANALYSIS

Section 1 Provides the long and short titles.

Section 2 Amends Title 21 of the D.C. Official Code to add a new Chapter 25 that:

- (a) Adds definitions of relevant terms;
- (b) Specifies that the act applies to a fiduciary acting under a will or power of attorney, a personal representative, a conservator, or a trustee, and to a user who resides in the District or did reside in the District at the time of their death, and that the bill does not apply to an employer's digital assets used in the ordinary course of business;
- (c) Provides a user a means to direct whether and to whom digital assets may be disclosed;
- (d) Establishes procedures for disclosing a user's digital assets, including the content of electronic communications and a catalogue of electronic communications;
- (e) Establishes procedures for disclosing a principal's digital assets, including the content of electronic communications and a catalogue of electronic communications;

(f) Establishes procedures for disclosing digital assets, including the content of electronic communications and a catalogue of electronic communications, held in a trust;

(g) Establishes procedures for disclosing to a conservator a protected person's digital assets, including the content of electronic communications and a catalogue of electronic communications;

(h) Describes a fiduciary's duties and authorities;

(i) Establishes time limits and procedures for a custodian to disclose digital assets, including the content of electronic communications and a catalogue of electronic communications; and

(j) Clarifies the impact of relevant federal law.

Section 3 Contains the fiscal impact statement.

Section 4 Contains the effective date.

COMMITTEE ACTION

On November 23, 2020, the Committee on the Judiciary and Public Safety held an Additional Meeting to consider and markup B23-0141, the "Uniform Fiduciary Access to Digital Assets Amendment Act of 2020". The meeting was called to order at 11:05 a.m. Chairperson Charles Allen recognized a quorum consisting of himself, Councilmembers Anita Bonds, Mary M. Cheh, Vincent C. Gray, Jr., Brooke Pinto, and Chairman Phil Mendelson. Chairperson Allen, without objection, moved the Committee Report and Print for B23-0141 en bloc with leave for staff to make technical, editorial, and conforming changes. After an opportunity for discussion, the Committee voted 6-0 to approve the Committee Report and Print, with the Members voting as follows:

YES: Chairperson Allen, Councilmembers Bonds, Cheh, Gray, and Pinto, and Chairman Mendelson

NO: None

PRESENT: None

ABSENT: None

LIST OF ATTACHMENTS

- (A) B23-0141, as introduced
- (B) B22-0199, as introduced

- (C) Notice of Public Hearing on B22-0199, as filed in the *District of Columbia Register*
- (D) Agenda and Witness List on B22-0199
- (E) Witness Testimony on B22-0199
- (F) Fiscal Impact Statement
- (G) Legal Sufficiency Determination
- (H) Committee Print

ATTACHMENT A

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : February 19, 2019

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Tuesday, February 12, 2019. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Uniform Fiduciary Access to Digital Assets Act of 2019", B23-0141

INTRODUCED BY: Councilmember Allen

The Chairman is referring this legislation to the Committee on Judiciary and Public Safety.

Attachment

cc: General Counsel
Budget Director
Legislative Services

1 
2 Councilmember Jack Evans

3
4 
5 Councilmember David Grosso


Councilmember Charles Allen


Councilmember Brianne K. Nadeau

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11 A BILL
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16 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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21 To amend Title 21 of the District of Columbia Official Code to enact the Revised Uniform
22 Fiduciary Access to Digital Assets Act to allow holders of accounts with digital assets to
23 give access to these accounts to fiduciaries, including executors, agents, conservators,
24 and trustees; to provide default rules governing access by fiduciaries to these accounts;
25 and to provide immunity from liability for custodians of accounts that comply with a
26 fiduciary's apparent authorized request for access.
27

28 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
29 act may be cited as the "Uniform Fiduciary Access to Digital Assets Act of 2019".

30 Sec. 2. Title 21 of the District of Columbia Official Code is amended as follows:

31 (a) The table of contents is amended by adding a new chapter heading at the end to read
32 as follows:

33 "25. Uniform Fiduciary Access to Digital Assets Act."

34 (b) A new Chapter 25 is added to read as follows:

35 "CHAPTER 25. UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.

36 "Section

37 "21-2501. Short title.

38 “21-2502. Definitions.

39 “21-2503. Applicability.

40 “21-2504. User direction for disclosure of digital assets.

41 “21-2505. Terms-of-service agreement.

42 “21-2506. Procedure for disclosing digital assets.

43 “21-2507. Disclosure of contents of electronic communications of deceased user.

44 “21-2508. Disclosure of other digital assets of deceased user.

45 “21-2509. Disclosure of contents of electronic communications of principal.

46 “21-2510. Disclosure of other digital assets of principal.

47 “21-2511. Disclosure of digital assets held in trust when trustee is original user.

48 “21-2512. Disclosure of contents of electronic communications held in trust when trustee

49 not original user.

50 “21-2513. Disclosure of other digital assets held in trust when trustee not original user.

51 “21-2514. Disclosure of digital assets to conservator of protected person.

52 “21-2515. Fiduciary duty and authority.

53 “21-2516. Custodian compliance and immunity.

54 “21-2517. Uniformity of application and construction.

55 “21-2518. Relation to Electronic Signatures in Global and National Commerce Act.

56 “§ 21-2501. Short title.

57 “This chapter may be cited as the “Uniform Fiduciary Access to Digital Assets Act of

58 2017”.

59 “§ 21-2502. Definitions.

60 “For purposes of this chapter:

61 “(1) “Account” means an arrangement under a terms-of-service agreement in which a
62 custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides
63 goods or services to the user.

64 “(2) “Agent” means an attorney-in-fact granted authority under a durable or nondurable
65 power of attorney.

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

67 “(4) “Catalogue of electronic communications” means information that identifies each
68 person with which a user has had an electronic communication, the time and date of the
69 communication, and the electronic address of the person.

70 “(5) “Conservator” means a person appointed by a court to manage the estate of a living
71 individual. The term includes a limited conservator.

72 “(6) “Content of an electronic communication” means information concerning the
73 substance or meaning of the communication which:

74 “(A) Has been sent or received by a user;

75 “(B) Is in electronic storage by a custodian providing an electronic
76 communication service to the public or is carried or maintained by a custodian providing a
77 remote-computing service to the public; and

78 “(C) Is not readily accessible to the public.

79 “(7) “Custodian” means a person that carries, maintains, processes, receives, or stores a
80 digital asset of a user.

81 “(8) “Designated recipient” means a person chosen by a user using an online tool to
82 administer digital assets of the user.

83 “(9) “Digital asset” means an electronic record in which an individual has a right or
84 interest. The term does not include an underlying asset or liability unless the asset or liability is
85 itself an electronic record.

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

88 “(11) “Electronic communication” has the meaning set forth in 18 U.S.C. § 2510(12).

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

91 “(13) “Fiduciary” means an original, additional, or successor personal representative,
92 conservator, agent, or trustee.

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

95 “(15) “Online tool” means an electronic service provided by a custodian that allows the
96 user, in an agreement distinct from the terms-of-service agreement between the custodian and
97 user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

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

101 “(17) “Personal representative” means an executor, administrator, special administrator,
102 or person that performs substantially the same function under laws of the District of Columbia
103 other than this chapter.

104 “(18) “Power of attorney” means a record that grants an agent authority to act in the place
105 of a principal.

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

108 “(20) “Protected person” means an individual for whom a conservator has been
109 appointed. The term includes an individual for whom an application for the appointment of a
110 conservator is pending.

111 “(21) “Record” means information that is inscribed on a tangible medium or that is stored
112 in an electronic or other medium and is retrievable in perceivable form.

113 “(22) “Remote-computing service” means a custodian that provides to a user computer
114 processing services or the storage of digital assets by means of an electronic communications
115 system, as defined in 18 U.S.C. § 2510(14).

116 “(23) “Superior Court” means the Superior Court of the District of Columbia.

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

119 “(25) “Trustee” means a fiduciary with legal title to property under an agreement or
120 declaration that creates a beneficial interest in another. The term includes a successor trustee.

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

122 “(27) “Will” includes a codicil, a testamentary instrument that only appoints an executor,
123 and an instrument that revokes or revises a testamentary instrument.

124 “§ 21-2503. Applicability.

125 “(a) This chapter applies to:

126 “(1) A fiduciary acting under a will or power of attorney executed before, on, or
127 after the effective date of this chapter;

128 “(2) A personal representative acting for a decedent who died before, on, or after
129 the effective date of this chapter;

130 “(3) A conservatorship proceeding commenced before, on, or after the effective
131 date of this chapter; and

132 “(4) A trustee acting under a trust created before, on, or after the effective date of
133 this chapter.

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

136 “(c) This chapter does not apply to a digital asset of an employer used by an employee in
137 the ordinary course of the employer’s business.

138 “§ 21-2504. User direction for disclosure of digital assets.

139 “(a) A user may use an online tool to direct the custodian to disclose or not to disclose to
140 a designated recipient some or all of the user’s digital assets, including the content of electronic
141 communications. If the online tool allows the user to modify or delete a direction at all times, a
142 direction regarding disclosure using an online tool overrides a contrary direction by the user in a
143 will, trust, power of attorney, or other record.

144 “(b) If a user has not used an online tool to give direction under subsection (a) or if the
145 custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of
146 attorney, or other record, disclosure to a fiduciary of some or all of the user’s digital assets,
147 including the content of electronic communications sent or received by the user.

148 “(c) A user’s direction under subsection (a) or (b) overrides a contrary provision in a
149 terms-of-service agreement that does not require the user to act affirmatively and distinctly from
150 the user’s assent to the terms of service.

“§ 21-2505. Terms-of-service agreement.

“(a) This chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

“(b) This chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

“(c) A fiduciary’s or designated recipient’s access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under § 21-2504.

“§ 21-2506. Procedure for disclosing digital assets.

“(a) When disclosing digital assets of a user under this chapter, the custodian may at its sole discretion:

“(1) Grant a fiduciary or designated recipient full access to the user’s account;

“(2) Grant a fiduciary or designated recipient partial access to the user’s account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

“(3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

“(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

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

“(d) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user’s digital assets, the custodian need not disclose the assets if

segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the Superior Court to disclose:

“(1) A subset limited by date of the user’s digital assets;

“(2) All of the user’s digital assets to the fiduciary or designated recipient;

“(3) None of the user’s digital assets; or

“(4) All of the user’s digital assets to the Superior Court for review in camera.

“§ 21-2507. Disclosure of contents of electronic communications of deceased user.

“If a deceased user consented or the Superior Court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

“(1) A written request for disclosure in physical or electronic form;

“(2) A certified copy of the death certificate of the user;

“(3) A certified copy of the letter of appointment of the representative or a small-estate affidavit or court order;

“(4) Unless the user provided direction using an online tool, a copy of the user’s will, trust, power of attorney, or other record evidencing the user’s consent to disclosure of the content of electronic communications; and

“(5) If requested by the custodian:

“(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; or

197 “(C) A finding by the Superior Court that:

198 “(i) The user had a specific account with the custodian, identifiable by the

199 information specified in subparagraph (A);

200 “(ii) Disclosure of the content of electronic communications of the user

201 would not violate 18 U.S.C. § 2701 *et seq.*, 47 U.S.C. § 222, or other applicable laws;

202 “(iii) Unless the user provided direction using an online tool, the user

203 consented to disclosure of the content of electronic communications; or

204 “(iv) Disclosure of the content of electronic communications of the user is

205 reasonably necessary for administration of the estate.

206 “§ 21-2508. Disclosure of other digital assets of deceased user.

207 “Unless the user prohibited disclosure of digital assets or the Superior Court directs

208 otherwise, a custodian shall disclose to the personal representative of the estate of a deceased

209 user a catalogue of electronic communications sent or received by the user and digital assets,

210 other than the content of electronic communications, of the user, if the representative gives the

211 custodian:

212 “(1) A written request for disclosure in physical or electronic form;

213 “(2) A certified copy of the death certificate of the user;

214 “(3) A certified copy of the letter of appointment of the representative or a small-estate

215 affidavit or court order; and

216 “(4) If requested by the custodian:

217 “(A) A number, username, address, or other unique subscriber or account

218 identifier assigned by the custodian to identify the user’s account;

219 “(B) Evidence linking the account to the user;

220 “(C) An affidavit stating that disclosure of the user’s digital assets is reasonably
221 necessary for administration of the estate; or

222 “(D) A finding by the Superior Court that:

223 “(i) The user had a specific account with the custodian, identifiable by the
224 information specified in subparagraph (A); or

225 “(ii) Disclosure of the user’s digital assets is reasonably necessary for
226 administration of the estate.

227 “§ 21-2510. Disclosure of other digital assets of principal.

228 “To the extent a power of attorney expressly grants an agent authority over the content of
229 electronic communications sent or received by the principal and unless directed otherwise by the
230 principal or the Superior Court, a custodian shall disclose to the agent the content if the agent
231 gives the custodian:

232 “(1) A written request for disclosure in physical or electronic form;

233 “(2) An original or copy of the power of attorney expressly granting the agent authority
234 over the content of electronic communications of the principal;

235 “(3) A certification by the agent, under penalty of perjury, that the power of attorney is in
236 effect; and

237 “(4) If requested by the custodian:

238 “(A) A number, username, address, or other unique subscriber or account
239 identifier assigned by the custodian to identify the principal’s account; or

240 “(B) Evidence linking the account to the principal.

241 “§ 21-2510. Disclosure of other digital assets of principal.

242 “Unless otherwise ordered by the Superior Court, directed by the principal, or provided
243 by a power of attorney, a custodian shall disclose to an agent with specific authority over digital
244 assets or general authority to act on behalf of a principal a catalogue of electronic
245 communications sent or received by the principal and digital assets, other than the content of
246 electronic communications, of the principal if the agent gives the custodian:

247 “(1) A written request for disclosure in physical or electronic form;

248 “(2) An original or a copy of the power of attorney that gives the agent specific authority
249 over digital assets or general authority to act on behalf of the principal;

250 “(3) A certification by the agent, under penalty of perjury, that the power of attorney is in
251 effect; and

252 “(4) If requested by the custodian:

253 “(A) A number, username, address, or other unique subscriber or account
254 identifier assigned by the custodian to identify the principal’s account; or

255 “(B) Evidence linking the account to the principal.

256 “§ 21-2511. Disclosure of digital assets held in trust when trustee is original user.

257 “Unless otherwise ordered by the Superior Court or provided in a trust, a custodian shall
258 disclose to a trustee that is an original user of an account any digital asset of the account held in
259 trust, including a catalogue of electronic communications of the trustee and the content of
260 electronic communications.

261 “§ 21-2512. Disclosure of contents of electronic communications held in trust when
262 trustee not original user.

263 “Unless otherwise ordered by the Superior Court, directed by the user, or provided in a
264 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 account of the trust if the trustee gives the custodian:

“(1) A written request for disclosure in physical or electronic form;

“(2) A certified copy of the trust instrument or a certification of the trust under § 19-1310.13 that includes consent to disclosure of the content of electronic communications to the trustee;

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

“(4) If requested by the custodian:

“(A) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust’s account; or

“(B) Evidence linking the account to the trust.

“§ 21-2513. Disclosure of other digital assets held in trust when trustee not original user.

“Unless otherwise ordered by the Superior 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:

“(1) A written request for disclosure in physical or electronic form;

“(2) A certified copy of the trust instrument or a certification of the trust under § 19-1310.13;

288 “(3) A certification by the trustee, under penalty of perjury, that the trust exists and the
289 trustee is a currently acting trustee of the trust; and

290 “(4) If requested by the custodian:

291 “(A) A number, username, address, or other unique subscriber or account
292 identifier assigned by the custodian to identify the trust’s account; or

293 “(B) Evidence linking the account to the trust.

294 “§ 21-2514. Disclosure of digital assets to conservator of protected person.

295 “(a) After an opportunity for a hearing under § 21-2054, the Superior Court may grant a
296 conservator access to the digital assets of a protected person.

297 “(b) Unless otherwise ordered by the Superior Court or directed by the user, a custodian
298 shall disclose to a conservator the catalogue of electronic communications sent or received by a
299 protected person and any digital assets, other than the content of electronic communications, in
300 which the protected person has a right or interest if the conservator gives the custodian:

301 “(1) A written request for disclosure in physical or electronic form;

302 “(2) A certified copy of the court order that gives the conservator authority over
303 the digital assets of the protected person; and

304 “(3) If requested by the custodian:

305 “(A) A number, username, address, or other unique subscriber or account
306 identifier assigned by the custodian to identify the account of the protected person; or

307 “(B) Evidence linking the account to the protected person.

308 “(c) A conservator with general authority to manage the assets of a protected person may
309 request a custodian of the digital assets of the protected person to suspend or terminate an
310 account of the protected person for good cause. A request made under this section must be

accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

“§ 21-2515. Fiduciary duty and authority.

“(a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

“(1) The duty of care;

“(2) The duty of loyalty; and

“(3) The duty of confidentiality.

“(b) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

“(1) Except as otherwise provided in § 21-2504, is subject to the applicable terms of service;

“(2) Is subject to other applicable law, including copyright law;

“(3) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

“(4) May not be used to impersonate the user.

“(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 property of the decedent, protected person, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws.

334 “(e) A fiduciary with authority over the tangible, personal property of a decedent,
335 protected person, principal, or settlor:

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

337 “(2) Is an authorized user for the purpose of computer-fraud and unauthorized-
338 computer-access laws.

339 “(f) A custodian may disclose information in an account to a fiduciary of the user when
340 the information is required to terminate an account used to access digital assets licensed to the
341 user.

342 “(g) A fiduciary of a user may request a custodian to terminate the user’s account. A
343 request for termination must be in writing, in either physical or electronic form, and
344 accompanied by:

345 “(1) If the user is deceased, a certified copy of the death certificate of the user;

346 “(2) A certified copy of the letter of appointment of the representative or a small-
347 estate affidavit or court order, court order, power of attorney, or trust giving the fiduciary
348 authority over the account; and

349 “(3) If requested by the custodian:

350 “(A) A number, username, address, or other unique subscriber or account
351 identifier assigned by the custodian to identify the user’s account;

352 “(B) Evidence linking the account to the user; or

353 “(C) A finding by the Superior Court that the user had a specific account
354 with the custodian, identifiable by the information specified in subparagraph (A).

“§ 21-2516. Custodian compliance and immunity.

“(a) Not later than 60 days after receipt of the information required under §§ 21-2507 to 21-2514, a custodian shall comply with a request under this chapter 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 Superior Court for an order directing compliance.

“(b) An order under subsection (a) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. § 2702.

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

“(d) A custodian may deny a request under this chapter 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 following the receipt of the fiduciary’s request.

“(e) This chapter does not limit a custodian’s ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order which:

“(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; and

“(3) Contains a finding required by law other than this chapter.

“(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 chapter.

“§ 21-2517. Uniformity of application and construction.

378 “In applying and construing this uniform act, consideration must be given to the need to
379 promote uniformity of the law with respect to its subject matter among states that enact it.

380 “§ 21-2518. Relation to Electronic Signatures in Global and National Commerce Act.

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

385 Sec. 3. Fiscal impact statement.

386 The Council adopts the fiscal impact statement in the committee report as the fiscal
387 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
388 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

389 Sec. 4. Effective date.

390 This act shall take effect following approval by the Mayor (or in the event of veto by the
391 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
392 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
393 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
394 Columbia Register.

ATTACHMENT B

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : March 21, 2017

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, March 21, 2017. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Uniform Fiduciary Access to Digital Assets Act of 2017", B22-0199


INTRODUCED BY: Councilmembers Allen, Grosso, Bonds, Evans, and Nadeau

The Chairman is referring this legislation to the Committee on Judiciary and Public Safety.

Attachment

cc: General Counsel
Budget Director
Legislative Services

1 
2 Councilmember Anita Bonds


Councilmember Charles Allen

3
4 
5 Councilmember Jack Evans


Councilmember David Grosso

6
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10 A BILL
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14

15 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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19

20 To amend Title 21 of the District of Columbia Official Code to enact the Revised Uniform
21 Fiduciary Access to Digital Assets Act to allow holders of accounts with digital assets to
22 give access to these accounts to fiduciaries, including executors, agents, conservators,
23 and trustees; to provide default rules governing access by fiduciaries to these accounts;
24 and to provide immunity from liability for custodians of accounts that comply with a
25 fiduciary's apparent authorized request for access.
26

27 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
28 act may be cited as the "Uniform Fiduciary Access to Digital Assets Act of 2017".

29 Sec. 2. Title 21 of the District of Columbia Official Code is amended as follows:

30 (a) The table of contents is amended by adding a new chapter heading at the end to read
31 as follows:

32 "25. Uniform Fiduciary Access to Digital Assets Act."

33 (b) A new Chapter 25 is added to read as follows:

34 "CHAPTER 25. UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.

35 "Section

36 "21-2501. Short title.

37 “21-2502. Definitions.

38 “21-2503. Applicability.

39 “21-2504. User direction for disclosure of digital assets.

40 “21-2505. Terms-of-service agreement.

41 “21-2506. Procedure for disclosing digital assets.

42 “21-2507. Disclosure of contents of electronic communications of deceased user.

43 “21-2508. Disclosure of other digital assets of deceased user.

44 “21-2509. Disclosure of contents of electronic communications of principal.

45 “21-2510. Disclosure of other digital assets of principal.

46 “21-2511. Disclosure of digital assets held in trust when trustee is original user.

47 “21-2512. Disclosure of contents of electronic communications held in trust when trustee

48 not original user.

49 “21-2513. Disclosure of other digital assets held in trust when trustee not original user.

50 “21-2514. Disclosure of digital assets to conservator of protected person.

51 “21-2515. Fiduciary duty and authority.

52 “21-2516. Custodian compliance and immunity.

53 “21-2517. Uniformity of application and construction.

54 “21-2518. Relation to Electronic Signatures in Global and National Commerce Act.

55 “§ 21-2501. Short title.

56 “This chapter may be cited as the “Uniform Fiduciary Access to Digital Assets Act of

57 2017”.

58 “§ 21-2502. Definitions.

59 “For purposes of this chapter:

60 “(1) “Account” means an arrangement under a terms-of-service agreement in which a
61 custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides
62 goods or services to the user.

63 “(2) “Agent” means an attorney-in-fact granted authority under a durable or nondurable
64 power of attorney.

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

66 “(4) “Catalogue of electronic communications” means information that identifies each
67 person with which a user has had an electronic communication, the time and date of the
68 communication, and the electronic address of the person.

69 “(5) “Conservator” means a person appointed by a court to manage the estate of a living
70 individual. The term includes a limited conservator.

71 “(6) “Content of an electronic communication” means information concerning the
72 substance or meaning of the communication which:

73 “(A) Has been sent or received by a user;

74 “(B) Is in electronic storage by a custodian providing an electronic
75 communication service to the public or is carried or maintained by a custodian providing a
76 remote-computing service to the public; and

77 “(C) Is not readily accessible to the public.

78 “(7) “Custodian” means a person that carries, maintains, processes, receives, or stores a
79 digital asset of a user.

80 “(8) “Designated recipient” means a person chosen by a user using an online tool to
81 administer digital assets of the user.

82 “(9) “Digital asset” means an electronic record in which an individual has a right or
83 interest. The term does not include an underlying asset or liability unless the asset or liability is
84 itself an electronic record.

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

87 “(11) “Electronic communication” has the meaning set forth in 18 U.S.C. § 2510(12).

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

90 “(13) “Fiduciary” means an original, additional, or successor personal representative,
91 conservator, agent, or trustee.

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

94 “(15) “Online tool” means an electronic service provided by a custodian that allows the
95 user, in an agreement distinct from the terms-of-service agreement between the custodian and
96 user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

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

100 “(17) “Personal representative” means an executor, administrator, special administrator,
101 or person that performs substantially the same function under laws of the District of Columbia
102 other than this chapter.

103 “(18) “Power of attorney” means a record that grants an agent authority to act in the place
104 of a principal.

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

107 “(20) “Protected person” means an individual for whom a conservator has been
108 appointed. The term includes an individual for whom an application for the appointment of a
109 conservator is pending.

110 “(21) “Record” means information that is inscribed on a tangible medium or that is stored
111 in an electronic or other medium and is retrievable in perceivable form.

112 “(22) “Remote-computing service” means a custodian that provides to a user computer
113 processing services or the storage of digital assets by means of an electronic communications
114 system, as defined in 18 U.S.C. § 2510(14).

115 “(23) “Superior Court” means the Superior Court of the District of Columbia.

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

118 “(25) “Trustee” means a fiduciary with legal title to property under an agreement or
119 declaration that creates a beneficial interest in another. The term includes a successor trustee.

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

121 “(27) “Will” includes a codicil, a testamentary instrument that only appoints an executor,
122 and an instrument that revokes or revises a testamentary instrument.

123 “§ 21-2503. Applicability.

124 “(a) This chapter applies to:

125 “(1) A fiduciary acting under a will or power of attorney executed before, on, or
126 after the effective date of this chapter;

127 “(2) A personal representative acting for a decedent who died before, on, or after
128 the effective date of this chapter;

129 “(3) A conservatorship proceeding commenced before, on, or after the effective
130 date of this chapter; and

131 “(4) A trustee acting under a trust created before, on, or after the effective date of
132 this chapter.

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

135 “(c) This chapter does not apply to a digital asset of an employer used by an employee in
136 the ordinary course of the employer’s business.

137 “§ 21-2504. User direction for disclosure of digital assets.

138 “(a) A user may use an online tool to direct the custodian to disclose or not to disclose to
139 a designated recipient some or all of the user’s digital assets, including the content of electronic
140 communications. If the online tool allows the user to modify or delete a direction at all times, a
141 direction regarding disclosure using an online tool overrides a contrary direction by the user in a
142 will, trust, power of attorney, or other record.

143 “(b) If a user has not used an online tool to give direction under subsection (a) or if the
144 custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of
145 attorney, or other record, disclosure to a fiduciary of some or all of the user’s digital assets,
146 including the content of electronic communications sent or received by the user.

147 “(c) A user’s direction under subsection (a) or (b) overrides a contrary provision in a
148 terms-of-service agreement that does not require the user to act affirmatively and distinctly from
149 the user’s assent to the terms of service.

150 “§ 21-2505. Terms-of-service agreement.

151 “(a) This chapter does not change or impair a right of a custodian or a user under a terms-
152 of-service agreement to access and use digital assets of the user.

153 “(b) This chapter does not give a fiduciary or designated recipient any new or expanded
154 rights other than those held by the user for whom, or for whose estate, the fiduciary or designated
155 recipient acts or represents.

156 “(c) A fiduciary’s or designated recipient’s access to digital assets may be modified or
157 eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not
158 provided direction under § 21-2504.

159 “§ 21-2506. Procedure for disclosing digital assets.

160 “(a) When disclosing digital assets of a user under this chapter, the custodian may at its
161 sole discretion:

162 “(1) Grant a fiduciary or designated recipient full access to the user’s account;

163 “(2) Grant a fiduciary or designated recipient partial access to the user’s account
164 sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

165 “(3) Provide a fiduciary or designated recipient a copy in a record of any digital
166 asset that, on the date the custodian received the request for disclosure, the user could have
167 accessed if the user were alive and had full capacity and access to the account.

168 “(b) A custodian may assess a reasonable administrative charge for the cost of disclosing
169 digital assets under this chapter.

170 “(c) A custodian need not disclose under this chapter a digital asset deleted by a user.

171 “(d) If a user directs or a fiduciary requests a custodian to disclose under this chapter
172 some, but not all, of the user’s digital assets, the custodian need not disclose the assets if

segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the Superior Court to disclose:

“(1) A subset limited by date of the user’s digital assets;

“(2) All of the user’s digital assets to the fiduciary or designated recipient;

“(3) None of the user’s digital assets; or

“(4) All of the user’s digital assets to the Superior Court for review in camera.

“§ 21-2507. Disclosure of contents of electronic communications of deceased user.

“If a deceased user consented or the Superior Court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

“(1) A written request for disclosure in physical or electronic form;

“(2) A certified copy of the death certificate of the user;

“(3) A certified copy of the letter of appointment of the representative or a small-estate affidavit or court order;

“(4) Unless the user provided direction using an online tool, a copy of the user’s will, trust, power of attorney, or other record evidencing the user’s consent to disclosure of the content of electronic communications; and

“(5) If requested by the custodian:

“(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; or

196 “(C) A finding by the Superior Court that:

197 “(i) The user had a specific account with the custodian, identifiable by the

198 information specified in subparagraph (A);

199 “(ii) Disclosure of the content of electronic communications of the user

200 would not violate 18 U.S.C. § 2701 *et seq.*, 47 U.S.C. § 222, or other applicable laws;

201 “(iii) Unless the user provided direction using an online tool, the user

202 consented to disclosure of the content of electronic communications; or

203 “(iv) Disclosure of the content of electronic communications of the user is

204 reasonably necessary for administration of the estate.

205 “§ 21-2508. Disclosure of other digital assets of deceased user.

206 “Unless the user prohibited disclosure of digital assets or the Superior Court directs

207 otherwise, a custodian shall disclose to the personal representative of the estate of a deceased

208 user a catalogue of electronic communications sent or received by the user and digital assets,

209 other than the content of electronic communications, of the user, if the representative gives the

210 custodian:

211 “(1) A written request for disclosure in physical or electronic form;

212 “(2) A certified copy of the death certificate of the user;

213 “(3) A certified copy of the letter of appointment of the representative or a small-estate

214 affidavit or court order; and

215 “(4) If requested by the custodian:

216 “(A) A number, username, address, or other unique subscriber or account

217 identifier assigned by the custodian to identify the user’s account;

218 “(B) Evidence linking the account to the user;

219 “(C) An affidavit stating that disclosure of the user’s digital assets is reasonably
220 necessary for administration of the estate; or

221 “(D) A finding by the Superior Court that:

222 “(i) The user had a specific account with the custodian, identifiable by the
223 information specified in subparagraph (A); or

224 “(ii) Disclosure of the user’s digital assets is reasonably necessary for
225 administration of the estate.

226 “§ 21-2510. Disclosure of other digital assets of principal.

227 “To the extent a power of attorney expressly grants an agent authority over the content of
228 electronic communications sent or received by the principal and unless directed otherwise by the
229 principal or the Superior Court, a custodian shall disclose to the agent the content if the agent
230 gives the custodian:

231 “(1) A written request for disclosure in physical or electronic form;

232 “(2) An original or copy of the power of attorney expressly granting the agent authority
233 over the content of electronic communications of the principal;

234 “(3) A certification by the agent, under penalty of perjury, that the power of attorney is in
235 effect; and

236 “(4) If requested by the custodian:

237 “(A) A number, username, address, or other unique subscriber or account
238 identifier assigned by the custodian to identify the principal’s account; or

239 “(B) Evidence linking the account to the principal.

240 “§ 21-2510. Disclosure of other digital assets of principal.

241 “Unless otherwise ordered by the Superior Court, directed by the principal, or provided
242 by a power of attorney, a custodian shall disclose to an agent with specific authority over digital
243 assets or general authority to act on behalf of a principal a catalogue of electronic
244 communications sent or received by the principal and digital assets, other than the content of
245 electronic communications, of the principal if the agent gives the custodian:

246 “(1) A written request for disclosure in physical or electronic form;

247 “(2) An original or a copy of the power of attorney that gives the agent specific authority
248 over digital assets or general authority to act on behalf of the principal;

249 “(3) A certification by the agent, under penalty of perjury, that the power of attorney is in
250 effect; and

251 “(4) If requested by the custodian:

252 “(A) A number, username, address, or other unique subscriber or account
253 identifier assigned by the custodian to identify the principal’s account; or

254 “(B) Evidence linking the account to the principal.

255 “§ 21-2511. Disclosure of digital assets held in trust when trustee is original user.

256 “Unless otherwise ordered by the Superior Court or provided in a trust, a custodian shall
257 disclose to a trustee that is an original user of an account any digital asset of the account held in
258 trust, including a catalogue of electronic communications of the trustee and the content of
259 electronic communications.

260 “§ 21-2512. Disclosure of contents of electronic communications held in trust when
261 trustee not original user.

262 “Unless otherwise ordered by the Superior Court, directed by the user, or provided in a
263 trust, a custodian shall disclose to a trustee that is not an original user of an account the content

264 of an electronic communication sent or received by an original or successor user and carried,
265 maintained, processed, received, or stored by the custodian in the account of the trust if the
266 trustee gives the custodian:

267 “(1) A written request for disclosure in physical or electronic form;

268 “(2) A certified copy of the trust instrument or a certification of the trust under § 19-
269 1310.13 that includes consent to disclosure of the content of electronic communications to the
270 trustee;

271 “(3) A certification by the trustee, under penalty of perjury, that the trust exists and the
272 trustee is a currently acting trustee of the trust; and

273 “(4) If requested by the custodian:

274 “(A) A number, username, address, or other unique subscriber or account
275 identifier assigned by the custodian to identify the trust’s account; or

276 “(B) Evidence linking the account to the trust.

277 “§ 21-2513. Disclosure of other digital assets held in trust when trustee not original user.

278 “Unless otherwise ordered by the Superior Court, directed by the user, or provided in a
279 trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue
280 of electronic communications sent or received by an original or successor user and stored,
281 carried, or maintained by the custodian in an account of the trust and any digital assets, other
282 than the content of electronic communications, in which the trust has a right or interest if the
283 trustee gives the custodian:

284 “(1) A written request for disclosure in physical or electronic form;

285 “(2) A certified copy of the trust instrument or a certification of the trust under § 19-
286 1310.13;

287 “(3) A certification by the trustee, under penalty of perjury, that the trust exists and the
288 trustee is a currently acting trustee of the trust; and

289 “(4) If requested by the custodian:

290 “(A) A number, username, address, or other unique subscriber or account
291 identifier assigned by the custodian to identify the trust’s account; or

292 “(B) Evidence linking the account to the trust.

293 “§ 21-2514. Disclosure of digital assets to conservator of protected person.

294 “(a) After an opportunity for a hearing under § 21-2054, the Superior Court may grant a
295 conservator access to the digital assets of a protected person.

296 “(b) Unless otherwise ordered by the Superior Court or directed by the user, a custodian
297 shall disclose to a conservator the catalogue of electronic communications sent or received by a
298 protected person and any digital assets, other than the content of electronic communications, in
299 which the protected person has a right or interest if the conservator gives the custodian:

300 “(1) A written request for disclosure in physical or electronic form;

301 “(2) A certified copy of the court order that gives the conservator authority over
302 the digital assets of the protected person; and

303 “(3) If requested by the custodian:

304 “(A) A number, username, address, or other unique subscriber or account
305 identifier assigned by the custodian to identify the account of the protected person; or

306 “(B) Evidence linking the account to the protected person.

307 “(c) A conservator with general authority to manage the assets of a protected person may
308 request a custodian of the digital assets of the protected person to suspend or terminate an
309 account of the protected person for good cause. A request made under this section must be

310 accompanied by a certified copy of the court order giving the conservator authority over the
311 protected person's property.

312 "§ 21-2515. Fiduciary duty and authority.

313 "(a) The legal duties imposed on a fiduciary charged with managing tangible property
314 apply to the management of digital assets, including:

315 "(1) The duty of care;

316 "(2) The duty of loyalty; and

317 "(3) The duty of confidentiality.

318 "(b) A fiduciary's or designated recipient's authority with respect to a digital asset of a
319 user:

320 "(1) Except as otherwise provided in § 21-2504, is subject to the applicable terms
321 of service;

322 "(2) Is subject to other applicable law, including copyright law;

323 "(3) In the case of a fiduciary, is limited by the scope of the fiduciary's duties;
324 and

325 "(4) May not be used to impersonate the user.

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

330 "(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of
331 the property of the decedent, protected person, principal, or settlor for the purpose of applicable
332 computer-fraud and unauthorized-computer-access laws.

333 “(e) A fiduciary with authority over the tangible, personal property of a decedent,
334 protected person, principal, or settlor:

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

336 “(2) Is an authorized user for the purpose of computer-fraud and unauthorized-
337 computer-access laws.

338 “(f) A custodian may disclose information in an account to a fiduciary of the user when
339 the information is required to terminate an account used to access digital assets licensed to the
340 user.

341 “(g) A fiduciary of a user may request a custodian to terminate the user’s account. A
342 request for termination must be in writing, in either physical or electronic form, and
343 accompanied by:

344 “(1) If the user is deceased, a certified copy of the death certificate of the user;

345 “(2) A certified copy of the letter of appointment of the representative or a small-
346 estate affidavit or court order, court order, power of attorney, or trust giving the fiduciary
347 authority over the account; and

348 “(3) If requested by the custodian:

349 “(A) A number, username, address, or other unique subscriber or account
350 identifier assigned by the custodian to identify the user’s account;

351 “(B) Evidence linking the account to the user; or

352 “(C) A finding by the Superior Court that the user had a specific account
353 with the custodian, identifiable by the information specified in subparagraph (A).

354 “§ 21-2516. Custodian compliance and immunity.

355 “(a) Not later than 60 days after receipt of the information required under §§ 21-2507 to
356 21-2514, a custodian shall comply with a request under this chapter from a fiduciary or
357 designated recipient to disclose digital assets or terminate an account. If the custodian fails to
358 comply, the fiduciary or designated recipient may apply to the Superior Court for an order
359 directing compliance.

360 “(b) An order under subsection (a) directing compliance must contain a finding that
361 compliance is not in violation of 18 U.S.C. § 2702.

362 “(c) A custodian may notify the user that a request for disclosure or to terminate an
363 account was made under this chapter.

364 “(d) A custodian may deny a request under this chapter from a fiduciary or designated
365 recipient for disclosure of digital assets or to terminate an account if the custodian is aware of
366 any lawful access to the account following the receipt of the fiduciary’s request.

367 “(e) This chapter does not limit a custodian’s ability to obtain or require a fiduciary or
368 designated recipient requesting disclosure or termination under this chapter to obtain a court
369 order which:

370 “(1) Specifies that an account belongs to the protected person or principal;

371 “(2) Specifies that there is sufficient consent from the protected person or
372 principal to support the requested disclosure; and

373 “(3) Contains a finding required by law other than this chapter.

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

376 “§ 21-2517. Uniformity of application and construction.

377 “In applying and construing this uniform act, consideration must be given to the need to
378 promote uniformity of the law with respect to its subject matter among states that enact it.

379 “§ 21-2518. Relation to Electronic Signatures in Global and National Commerce Act.

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

384 Sec. 3. Fiscal impact statement.

385 The Council adopts the fiscal impact statement in the committee report as the fiscal
386 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
387 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

388 Sec. 4. Effective date.

389 This act shall take effect following approval by the Mayor (or in the event of veto by the
390 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
391 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
392 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
393 Columbia Register.

ATTACHMENT C

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

**BILL 22-0012, THE “REVISION OF GUARDIANSHIP OF MINORS AND CREATION OF
SUPPLEMENTAL NEEDS TRUSTS ACT OF 2017”**

BILL 22-0020, THE “CONSUMER DISCLOSURE ACT OF 2017”

BILL 22-0049, THE “UNIFORM POWER OF ATTORNEY AMENDMENT ACT OF 2017”

BILL 22-0169, THE “ELECTRONIC SIGNATURE AUTHORIZATION ACT OF 2017”

BILL 22-0198, THE “UNIFORM PARTITION OF HEIRS' PROPERTY ACT OF 2017”

**BILL 22-0199, THE “UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT OF
2017”**

**Thursday, June 1, 2017, 9:30 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Thursday, June 1, 2017, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a public hearing on Bill 22-0012, the “Revision of Guardianship of Minors and Creation of Supplemental Needs Trusts Act of 2017”; Bill 22-0020, the “Consumer Disclosure Act of 2017”; Bill 22-0049, the “Uniform Power of Attorney Amendment Act of 2017”; Bill 22-0169, the “Electronic Signature Authorization Act of 2017”; Bill 22-0198, the “Uniform Partition of Heirs' Property Act of 2017”; and Bill 22-0199, the “Uniform Fiduciary Access to Digital Assets Act of 2017”. The hearing will take place in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 9:30 a.m.

The stated purpose of B22-0012, the “Revision of Guardianship of Minors and Creation of Supplemental Needs Trusts Act of 2017”, is to amend Titles 21 and 16 of the District of

Columbia Code to revise and update the laws relating to guardianships of minor children and protection of property of minor children.

The stated purpose of Bill 22-0020, the “Consumer Disclosure Act of 2017”, is to require that the transfer of structured settlement payment rights be approved by a court or responsible administrative authority; and to require disclosure of a contract clause that causes the contract to automatically renew.

The stated purpose of Bill 22-0049, the “Uniform Power of Attorney Amendment Act of 2017”, is to enact the Uniform Power of Attorney Act, to provide clear statutory guidance to individuals creating powers of attorney and to agents acting under powers of attorney, to clarify the fiduciary duties of agents to their principals, to protect individuals creating powers of attorney against fraud or other abuse by agents, to protect third parties who deal with agents exercising powers of attorney, and to provide a statutory form power of attorney that is easy to use, comprehensive, and legally effective.

The stated purpose of Bill 22-0169, the “Electronic Signature Authorization Act of 2017”, is to amend Chapters 1 and 7 of Title 18 of the District of Columbia Official Code to authorize the use of electronic signatures for testamentary documents and provide a method of authentication for electronic signatures; and to amend Chapters 11 and 13 of Title 19 to authorize the use of electronic signatures and provide a method of authentication for an electronic signature.

The stated purpose of Bill 22-0198, the “Uniform Partition of Heirs' Property Act of 2017”, is to enact the Uniform Partition of Heirs' Property Act, to require in the event that a co-tenant requests a partition, that the co-tenant give notice to other cotenants, that the property's fair market value be determined by a court-ordered appraisal, that the other co-tenants be given a right of first refusal, that, if no other co-tenant elects to purchase, the court order a partition-in-kind, unless the court determines that partition-in-kind will result in great prejudice to the cotenants as a group, and, if the court determines that a partition-in-kind is inappropriate and orders a partition-by-sale, that the property must be offered for sale on the open market at a price no lower than the court-determined value for a reasonable period of time and in a commercially reasonable manner.

The stated purpose of Bill 22-0199, the “Uniform Fiduciary Access to Digital Assets Act of 2017”, is to amend Title 21 of the District of Columbia Official Code to enact the Revised Uniform Fiduciary Access to Digital Assets Act to allow holders of accounts with digital assets to give access to these accounts to fiduciaries, including executors, agents, conservators, and trustees; to provide default rules governing access by fiduciaries to these accounts; and to provide immunity from liability for custodians of accounts that comply with a fiduciary's apparent authorized request for access.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at judiciary@dccouncil.us or at (202) 727-8275, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Friday, May 26**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of

three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on June 15.**

ATTACHMENT D

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
AGENDA & WITNESS LIST
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

**BILL 22-0012, THE “REVISION OF GUARDIANSHIP OF MINORS AND CREATION OF
SUPPLEMENTAL NEEDS TRUSTS ACT OF 2017”**

BILL 22-0020, THE “CONSUMER DISCLOSURE ACT OF 2017”

BILL 22-0049, THE “UNIFORM POWER OF ATTORNEY AMENDMENT ACT OF 2017”

BILL 22-0169, THE “ELECTRONIC SIGNATURE AUTHORIZATION ACT OF 2017”

BILL 22-0198, THE “UNIFORM PARTITION OF HEIRS' PROPERTY ACT OF 2017”

**BILL 22-0199, THE “UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT OF
2017”**

**Thursday, June 1, 2017, 9:30 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

AGENDA

- I. CALL TO ORDER**
- II. OPENING REMARKS**
- III. WITNESS TESTIMONY**

**Bill 22-0012, the “Revision of Guardianship of Minors and Creation of Supplemental Needs
Trusts Act of 2017”**

- i. Public Witnesses**

1. Denis Mitchell, Representative, Trial Lawyers Association of Metropolitan D.C.
2. Ed Varrone, Principal, Law Office of Ed Varrone
3. Gina Lynn, Attorney at Law, The Law Office of Gina Lynn

Bill 22-0020, the "Consumer Disclosure Act of 2017"

i. Public Witnesses

1. Henry L. Strong, President, JMW Settlements, Inc.
2. Patricia LaBorde, President, National Association of Settlement Purchasers
3. Thomas Papson, Volunteer Staff Attorney, Consumer Law Unit, Legal Aid Society for the District of Columbia

Bill 22-0049, the "Uniform Power of Attorney Amendment Act of 2017"

i. Public Witnesses

1. Mark C. Miller, District of Columbia Ombudsman, Office of District of Columbia Long-Term Care Ombudsman Program, AARP Legal Counsel for the Elderly
2. Tina Smith Nelson, Manager, Legal Counsel for the Elderly
3. Sheryl Rosensky Miller, Manager, Pro Bono Project, Legal Counsel for the Elderly
4. Phyllis Pricer, Public Witness
5. Merry O'Brien, Elder Justice Coordinator, Network for Victim Recovery of D.C.
6. Stephanie T. Perry, Partner, Pasternak & Fidis, P.C.
7. Gina Lynn, Attorney at Law, The Law Office of Gina Lynn
8. Benjamin Orzeske, Chief Counsel, National Conference of Commissioners on State Uniform Laws
9. Benny L. Kass, Member, Kass, Mitek & Kass, PLLC
10. David H. Cox, Counsel for Legislative Affairs, District of Columbia Land Title Association

ii. Government Witness

1. James C. McKay, Jr., Chair, D.C. Uniform Law Commission

Bill 22-0169, the "Electronic Signature Authorization Act of 2017"

i. Public Witnesses

1. Janene Jackson, Partner, Holland & Knight
2. Tom Dunlap, Partner, Dunlap Bennett & Ludwig
3. Gina Lynn, Attorney at Law, The Law Office of Gina Lynn
4. Margo Tank, Partner, Buckley Sandler
5. David H. Cox, Counsel for Legislative Affairs, District of Columbia Land Title Association

Bill 22-0198, the “Uniform Partition of Heirs’ Property Act of 2017”

i. Public Witnesses

1. Benny L. Kass, Member, Kass, Mitek & Kass, PLLC
2. Benjamin Orzeske, Chief Counsel, National Conference of Commissioners on State Uniform Laws
3. Gina Lynn, Attorney at Law, The Law Office of Gina Lynn
4. David H. Cox, Counsel for Legislative Affairs, District of Columbia Land Title Association

ii. Government Witness

1. James C. McKay, Jr., Chair, D.C. Uniform Law Commission

Bill 22-0199, the “Uniform Fiduciary Access to Digital Assets Act of 2017”

i. Public Witnesses

1. Benjamin Orzeske, Chief Counsel, National Conference of Commissioners on State Uniform Laws
2. Naomi Cahn, Professor of Law, George Washington University School of Law
3. Gina Lynn, Attorney at Law, The Law Office of Gina Lynn
4. Amy Loudermilk, Government Affairs Director, The Trevor Project

ii. Government Witness

1. James C. McKay, Jr., Chair, D.C. Uniform Law Commission

IV. ADJOURNMENT

ATTACHMENT E

**Testimony Submitted to the Committee on
The Judiciary**

**By D.C. Long-Term Care Ombudsman
For the District of Columbia**

**Public Hearing of
BILL 22-0049, THE "UNIFORM POWER OF ATTORNEY AMENDMENT ACT OF
2017"**

**BILL 22-0198, THE "UNIFORM PARTITION OF HEIRS' PROPERTY ACT OF
2017"**

**BILL 22-0199, THE "UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS
ACT OF 2017"**

Submitted by:
Mark C. Miller, D.C. Long-Term Care Ombudsman
Legal Counsel for the Elderly
Office of the D.C. Long-Term Care Ombudsman
601 E Street, N.W. T3-406
Washington, D.C. 20049
202-434-2190 Office
202-434-6595 Fax

Good morning Chairperson Allen and Members of the Committee on the Judiciary. I am Mark Miller, the D.C. Long Term Care Ombudsman with Legal Counsel for the Elderly, and I am submitting testimony today on behalf of the more than 5,000 District residents receiving long-term services and supports (LTSS) in nursing homes, assisted living residences, community residence facilities and in their private homes through the Elderly and Persons with Physical Disabilities (EPD) Waiver.

The Office of the D.C. Long-Term Care Ombudsman Program (Ombudsman Program) is a part of the D.C. Office on Aging Senior Service Network and is charged by federal and D.C. law with representing the interests of some of the District's most vulnerable citizens.

The Ombudsman Program has consistently supported stronger laws to prevent the financial exploitation of older adults. The Ombudsman Program has been involved in cases where residents' limited resources were taken by the very individuals they trusted, namely, their power of attorneys (POA). A financial power of attorney can be a "vital" document for residents, ensuring their wishes are followed when they cannot speak for themselves. Unfortunately, this trust and power can be easily betrayed and abused without legal protections.

For example, the Ombudsman Program was involved in a case in which a nursing home resident, upon admission, drafted a financial power of attorney so her family member could handle her property in the community. Soon after the resident finalized this document, this family member changed the deeds over to his name. Not only did the resident lose her property, but was at risk of losing Medicaid coverage for her nursing home stay. It took over three years for the case to be resolved and the property returned to the resident. The Ombudsman Program is also aware of family members whose actions may be viewed suspect by the nursing home, but are still allowed to visit the resident and even take the resident to the bank because the family member was named as the POA.

The District's power of attorney statute has not been updated for over 15 years. This statute, like that of many other jurisdictions, has become, a "license to steal"

because it fails to effectively prevent and deter power of attorney abuse.¹ Throughout the United States, Adult Protective Services and criminal justice professionals report an explosion of financial exploitation cases rooted in power of attorney arrangements.² Nationally, abuse, neglect and financial exploitation complaints handled by the Long Term Care Ombudsman Program increased by 11% from 2014 to 2015, representing 8% of all complaints. In 2015 alone, ombudsmen handled more than 3,700 cases of financial misappropriation or exploitation involving, facilities, family members and others.³

In 2006, the Uniform Law Commission, a non-partisan, non-profit organization that proposes model legislation by the states, approved the Uniform Power of Attorney Act (UPOAA). The UPOAA not only provides stronger protections for seniors and other vulnerable individuals, but it also makes it easier for them to attain advantages offered by the power of attorney. Currently twenty jurisdictions have adopted the UPOAA and the Ombudsman Program urges the D.C. Council to pass the “Uniform Power of Attorney Amendment Act of 2017.”

This law provides a more stringent standard of care that agents must follow; imposes liability for damages and attorney fees on wrongdoers who violate their duties and puts in place new safeguards to help principals and third parties prevent abuses. If passed, a third party can refuse to honor a POA if the third party reports suspected abuse to the state Adult Protective Services agency or knows that someone else has done so. This provision may have stopped the fraudulent transfer of property in the case I described earlier.

In addition to passing the UPOAA, the Ombudsman Program also supports passage of Bill 22-0198, The “Uniform Partition of Heirs Property Act of 2017” and Bill 22-0199, The “Uniform Fiduciary Access to Digital Assets Act of 2017.” Both of these bills would strengthen the autonomy of our D.C. seniors. The “Partition of Heirs Property Act” would prevent the property they leave to their heirs from being sold off because they were unable to make the necessary and often expensive provisions to ensure

¹ AARP Policy Report: Power of Attorney Abuse: What States Can Do About It (November 17, 2008)

² AARP Policy In Brief INB 164, Power of Attorney Abuse (November 2008)

³ Administration on Aging, Administration for Community Living, NORS Report Data 2014 and 2015

their property passed as joint tenants. And the "Access to Digital Assets Act" would ensure their fiduciaries can manage their digital documents per their estate plan.

Thank you for the opportunity to provide this testimony. I would be happy to answer any questions.

**Testimony Submitted to the Committee on
the Judiciary**

By Legal Counsel for the Elderly, Pro Bono Project

Public Hearing of

BILL 22-0049, THE "UNIFORM POWER OF ATTORNEY AMENDMENT ACT OF 2017"

BILL 22-0198, THE "UNIFORM PARTITION OF HEIRS' PROPERTY ACT OF 2017"

BILL 22-0199, THE "UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT OF 2017"

Submitted by:
Sheryl Rosensky Miller, Esq.
Manager, Pro Bono Project
Legal Counsel for the Elderly
601 E Street, N.W. T3-406
Washington, D.C. 20049
202-434-2120

Good morning, Chairperson Allen and Members of the Committee on the Judiciary. My name is Sheryl Rosensky Miller, Manager of Legal Counsel for the Elderly (LCE) Pro Bono Project. I am submitting testimony today on behalf of over 5,000 older District residents who have entrusted Legal Counsel for the Elderly and our pro bono lawyers to draft their financial and health care powers of attorney.

Legal Counsel for the Elderly created the Pro Bono Project in 1977 under a grant from the Legal Services Corporation. In the 1980's, AARP, the DC Office on Aging, and private donors began funding LCE's Pro Bono Project. Our program enables LCE to provide comprehensive, civil legal services to low-income older, DC residents by recruiting attorneys in DC law firms, corporations and the government to handle our cases free of charge. LCE's Pro Bono Project refers, places, and monitors about 600 wills, powers of attorney for finance and health care, and DC Transfer on Death Deeds (TODD) per year, which we assign to pro bono attorneys. Therefore, we have a great deal of experience with the profound benefits and serious risks associated with DC financial powers of attorney.

The time has come for the District of Columbia to join the 20 other jurisdictions nationwide that have adopted the Uniform Financial Power of Attorney Act. The major

concern with financial powers of attorney is the risk that the appointed agent could abuse his or her power. The UPOAA adds significant protections against fraud, abuse and financial exploitation.

1. The UPOAA Empowers a Third Party to Reject a Power of Attorney When Abuse is Suspected

A financial power of attorney is often referred to as a "license to steal." Over the years, LCE has unfortunately encountered situations in which so-called devoted and loving sons, daughters, grandchildren, or trusted friends have abused this power by taking adverse actions, such as selling a DC senior's home out from under her or him when the senior wanted to remain in the home and was capable of doing so. In these cases, LCE attorneys have had to bring lawsuits to save our clients' homes and restore title to the aggrieved DC residents.

In other situations, unscrupulous agents have misappropriated the principal's funds for his or her own use. The UPOAA has safeguards to prevent such fraudulent property transfers by nefarious agents. Under Sec. 2501.20(6), a third party, such as a financial institution or mortgage lender, has the legal authority to refuse to accept a proffered power of attorney if the third party "makes or has actual knowledge that another person had made a report to the Adult Protective Services Division . . . stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the agent or a person acting for or with the agent." If this seminal provision had existed in the current DC Power of Attorney Act, which has not been updated in 15 years, the third-party could have had a legal basis to refuse the power of attorney if he or she suspected financial abuse in accordance with the statute. The District's current law lacks this vital protection for our citizens of the District of Columbia.

2. The UPOAA Prevents Banks From Rejecting Valid Powers of Attorney.

The UPOAA prevents financial institutions and other entities from arbitrarily rejecting valid financial powers of attorney from trustworthy agents simply because it does not appear on the bank's form. A few years ago, LCE, had a client who was the power of attorney of her incapacitated 90-year-old mother. When the daughter needed to pay her mother's rent and utility bills, she took the power of attorney to her mother's

bank. However, the financial institution rejected the document outright, even though it complied fully with DC law. The bank clerk insisted that that mother sign another power of attorney on the financial institution's own financial power of attorney form. However, her mother had advanced stages of dementia at the time; therefore, she lacked the legal capacity to sign the bank's form.

Tragically, without the bank's acceptance of the valid power of attorney, the daughter could not pay her mother's rent and utility bills. Her mother faced the **real threat** of eviction and homelessness because the mother could not exercise her legal right through her agent to withdraw her own, hard-earned money from her bank. LCE has had other clients facing this unfortunate situation. If the District ratifies the UPOAA, this critical problem will no longer exist. Section 21-2501.20(3) stipulates: "A person may not require an additional or different form of power of attorney authority granted in the power of attorney presented." Thus, by adopting the UPOAA, banks will have no legal basis for rejecting a lawful financial power of attorney that is not on the bank's specific form.

3. The UPOAA Provides Monetary Damages for Malfeasance

Finally, the UPOAA's provisions on monetary damages will markedly discourage unprincipled agents from misappropriating funds. Unlike the current DC law, Section 21-2501.17 of the UPOAA empowers the court to order the bad actor to pay monetary damages, interest, and attorney's fees for financial abuse or exploitation. If this law is ratified, for the first time, the District residents will have strong recourse against these unscrupulous agents. The damages and judicial review provisions not only act as strong deterrents to agents contemplating breaching their duties under the power of attorney, but they also ensure that the bad actor will be held liable in court for monetary damages.

By adopting the Uniform Power of Attorney Act, the District government will vindicate the rights of the most vulnerable in our city – those who have entrusted their welfare, life savings and/or real property to trusted individuals to act in their best interests. The UPOA's three key provisions described above will go a long way toward preventing future financial exploitation against the at-risk citizens of the District of Columbia.

The Uniform Fiduciary Access to Digital Assets Act of 2017

LCE also urges the DC Council to pass the "The Uniform Fiduciary Access to Digital Assets Act." This law will ensure that agents have access to the principal's electronic banking accounts. Many thousands of DC residents take advantage of modern banking methods and online bill paying. If the agent lacks access to these vital electronic accounts, **dire circumstances**, such as evictions or utilities shut offs, regrettably will occur due to an agent's inability to access the agent's own money to meet his or her basic needs of food, housing, and medical care. LCE recommends to our clients that they include our sample digital access clause in their powers of attorney. However, this clause is not codified as DC law. By passing the "Uniform Fiduciary Access to Digital Assets Act," trusted agents in the District will be able to continue providing for their incapacitated principal's welfare by accessing essential funds on their behalf through electronic accounts.

For all the reasons set forth above, LCE strongly supports the passage of these bills, which will safeguard and protect the rights of the District's elderly and disabled citizens who are among the most susceptible targets of financial exploitation. Thank you for the opportunity to provide this written testimony.



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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Statement of Benjamin Orzeske, Chief Counsel of the Uniform Law Commission, to the District of Columbia City Council Committee on the Judiciary and Public Safety in support of Bill 22-199, the Revised Uniform Fiduciary Access to Digital Assets Act, June 1, 2017.

Chairperson Allen and Members of the Committee:

Thank you for considering Bill 22-199, which would enact the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). This bill is based on a uniform act produced by the Uniform Law Commission (ULC). The ULC is a non-profit organization formed in 1892 to draft non-partisan model legislation in the areas of state law for which uniformity among the states is advisable. The District has a long and successful history of enacting ULC acts including the Uniform Commercial Code, the Uniform Business Organizations Code, the Uniform Trust Code, and many dozens of others.

RUFADAA is necessary because the law has not kept pace with technological advances in the internet age. A generation ago, a human being delivered our mail, photos were kept in albums, documents were filed in file cabinets, and money was deposited at the corner bank. Today many of us use the internet instead. A few examples will illustrate the problem:

- A recently deceased DC resident received bills and bank statements by email only. The personal representative of the estate must review a list of email correspondents to find out who sent mail regularly to locate assets and determine liabilities of the estate.
- A decedent set up automatic, recurring payments from a bank account. His personal representative must be able to stop those automatic payments promptly to avoid overdrawing the account or risking liability for paying creditors out of the statutorily mandated order.
- An incapacitated individual is unable to change passwords when her accounts get hacked. Her court-appointed guardian needs authority to take remedial action to secure and monitor accounts to protect against identity theft or damage to the individual's reputation.
- An incapacitated small business owner is unable to manage her business and fill purchase orders. She had been using her personal, web-based email account to conduct business. An agent acting under her power of attorney needs to review relevant electronic communications to ensure that orders are filled on time and prevent failure of the business.
- A decedent owned domain names, a valuable blog, and Bitcoins. These assets have monetary value. The personal representative needs authority over digital property to ensure that its value is not lost to the decedent's heirs and to pay appropriate estate taxes.

This bill will give District of Columbia citizens the power to plan for the management and disposition of their digital assets in the same way they can make plans for their tangible property: by providing instructions in a will, trust, or power of attorney, or by using simple online planning tools. The act

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

encourages internet service providers to offer online tools that allow the user to name a designated recipient to receive access to the user's account if the user dies or loses capacity. In fact, Facebook and Google already offer these tools. If the user does not provide instructions, RUFADAA protects user privacy by prohibiting the fiduciary from accessing the content of the user's communications.

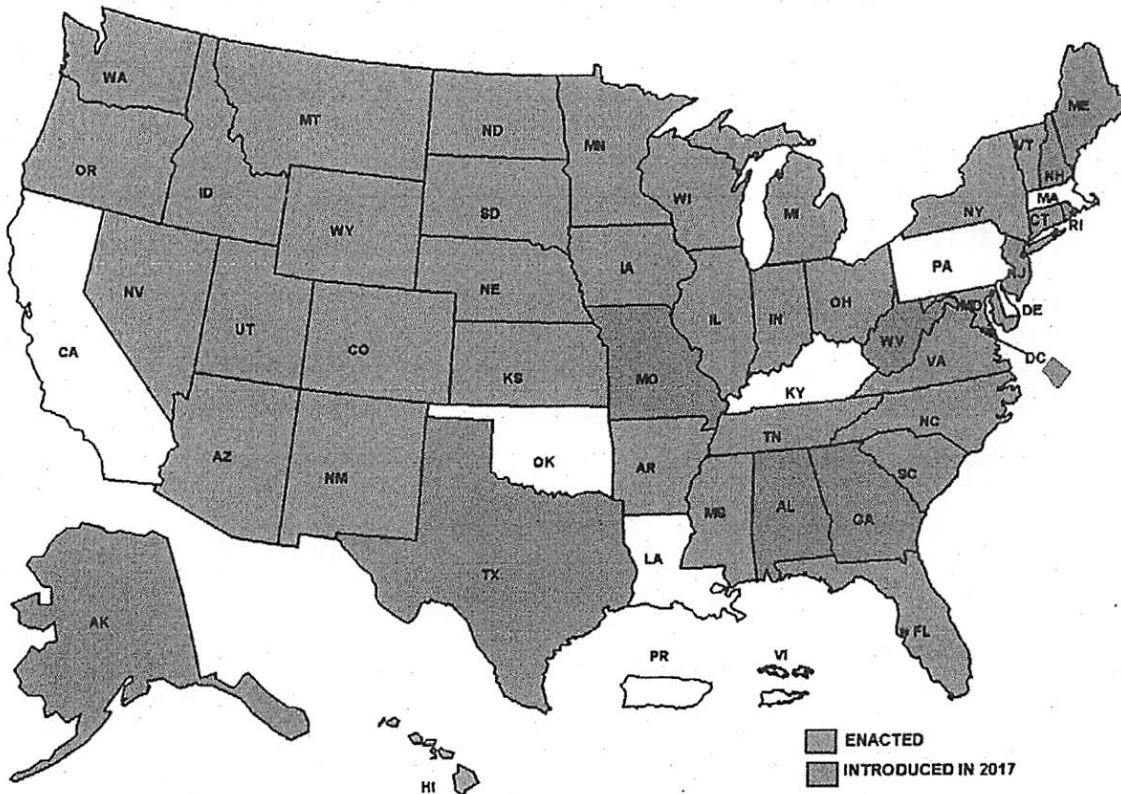
Bill 22-199 will authorize access to digital assets by four common types of fiduciaries:

1. personal representatives of decedents' estates,
2. court-appointed conservators of incapacitated persons' property,
3. agents under a power of attorney, and
4. trustees.

This uniform act is supported by major internet firms including Facebook and Google, by senior advocates including AARP and the National Academy of Elder Law Attorneys, and has been approved by the American Bar Association's Section on Real Property, Trust and Estate Law. It has been enacted so far in thirty-three states.

Enacting this legislation will give citizens of the District the ability to plan for disposition of their digital assets in the same way they can plan for their more tangible assets, and will bring DC laws into conformity with the many other jurisdictions that are enacting RUFADAA. I ask for your support to advance this important legislation for the digital age, and I welcome questions from the committee.

REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)



May 22, 2017

**Statement of Naomi Cahn, Professor, George Washington University Law School, and Reporter,
Uniform Fiduciary Access to Digital Assets Act*, to the DC Council Committee on the Judiciary &
Public Safety in support of Bill 22-0199, "The Uniform Fiduciary Access to Digital Assets Act of
2017" June 1, 2017**

Chairperson Allen and Members of the Committee:

Thank you for considering Bill 22-0199, which is designed to ensure that fiduciaries have access to digital assets under appropriate circumstances. For most of us, at least some of our property and communications are stored as data on a computer server and accessed via the Internet. While we can access those accounts during our lifetimes, there is great uncertainty over what happens to those digital assets when we die or lose capacity or place them into a trust or delegate authority to an agent acting under a power of attorney. Bill 22-0199 provides more certainty over just what will happen. As we drafted the model act, we appreciated the need for modern probate law to respond to the technological advances in the internet age, and for that response to respect an internet user's privacy.

Digital assets require distinct legislative treatment because, unlike other assets, such as our houses, printed photographs, or stocks and bonds, they are strictly controlled by federal privacy laws. To ensure respect for those laws, "The Uniform Fiduciary Access to Digital Assets Act of 2017" (UFADAA 2017) would establish a three-tier hierarchy for fiduciary access:

- a. If the internet provider has established an online tool for addressing issues of fiduciary access, and the user has filled out that form, then that controls the fiduciary's access to that particular asset, regardless of what the user's will, trust, or power of attorney might otherwise provide. This is analogous to a beneficiary designation. Thus, for example, Google has established an Inactive Account Manager; if the user has set that up, then the instructions in the Inactive Account Manager override any contrary provision.
- b. Where the provider has not established an online tool, or the user has not used that tool, then the user's written direction in a will, trust, power of attorney, or other record overrides a general direction in the internet service provider's terms-of-service agreement.
- c. If a user provides no specific direction under (a) or (b), then the internet service provider's terms of service will govern fiduciary access. If the terms of service do not address fiduciary access, the default rules of UFADAA 2017 will apply.

The default rules of UFADAA 2017 attempt to balance the user's privacy interest with the fiduciary's need for access by making a distinction between the "content of electronic communications," the "catalogue of electronic communications", and other types of digital assets.

The content of electronic communications includes the subject line and body of a user's email messages, text messages, and social media posts sent to a select group of personal contacts. A fiduciary may never access the content of electronic communications without the user's consent.

* Affiliations listed for purposes of identification only. The views expressed herein should not be ascribed either to George Washington University or the Uniform Law Commission.

When necessary, a fiduciary may have a right to access a catalogue of the user's electronic communications – essentially a list of communications showing the addresses of the sender and recipient, and the date and time the message was sent.

For example, the personal representative of a decedent's estate may need to access a catalogue of the decedent's communications in order to compile an inventory of estate assets. If the executor finds that the decedent received a monthly email message from a particular bank or credit card company, the executor can contact that company directly and request a statement of the decedent's account.

Other types of digital assets are not communications, but intangible personal property. For example, an agent under a power of attorney who has authority to access the principal's internet accounts will have access to family photos uploaded to a web site. Similarly, an executor that is distributing funds from the decedent's bank account will also have access to the decedent's virtual currency account (e.g. bitcoin).

Under UFADAA Section 15, fiduciaries for digital assets are subject to the same fiduciary duties that normally apply to tangible assets. Thus, for example, an executor may not publish the decedent's confidential communications or impersonate the decedent by sending email from the decedent's account. A fiduciary's management of digital assets may also be limited by other law. For example, a fiduciary may not copy or distribute digital files in violation of copyright law, and may not exceed the user's authority under the account's terms of service.

In order to gain access to digital assets, UFADAA 2017 requires a fiduciary to send a request to the custodian, accompanied by a certified copy of the document granting fiduciary authority, such as a letter of appointment, court order, or certification of trust. Custodians of digital assets that receive an apparently valid request for access are immune from any liability for acts done in good faith compliance with the request.

UFADAA 2017 is an overlay statute designed to work in conjunction with a DC's existing laws on probate, guardianship, trusts, and powers of attorney. Thank you for your consideration of this legislation.

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Testimony in Support of Bill 22-199
"The Uniform Fiduciary Access to Digital Assets Act of 2017"

My name is Giannina "Gina" Lynn. I am the principal in the Law Office of Giannina Lynn, a small estate planning and probate firm located on Capitol Hill in Ward 6. I have practiced law from my law office near Eastern Market for more than 20 years.

Over the course of the many years of my practice, I have focused my efforts on estates and trusts. I was a longtime member of the Superior Court's fiduciary panel, where I served as guardian and conservator for incapacitated individuals. I am also one of the longest serving members of the AARP Legal Counsel for the Elderly's reduced fee panel, which provides sliding scale legal services for our city's senior citizens.

I testify today in support of Bill 22-0199, the Uniform Fiduciary Access to Digital Assets Act of 2017.

This law is an important addition to our estates, trusts and probate law. The Uniform Law Commission has worked long and hard on this act, and it is well thought out and put together.

The DC Bar Estates, Trusts and Probate Section has had seminars on this topic and so have many other similar organizations. Most savvy estate planners are now inserting into their wills, trusts, and powers of attorney explicit instructions giving their fiduciary access to digital assets. This statute gives any personal representative, agent under a power of attorney, or conservator, access to these assets unless the principal has otherwise instructed.

Just by way of background, our existing probate law is very clear that the personal representative has the right administer all the decedent's assets. D.C. Code Section 20-105 states that with few exceptions "all property of a decedent shall be subject to this title, and upon the

GIANNINA LYNN
ATTORNEY AT LAW

decedent's death, shall pass directly to the personal representative, who shall hold the legal title for administration and distribution of the estate." In other words, the personal representative of an estate is entitled to administer *all* the assets of a decedent.

DC Code Section 20-702 gives a formal procedure for a personal representative to be able to go to court and get a "show cause" hearing to have property that belonged to the decedent that is being withheld by an entity turned over to the personal representative. This statute and an accompanying court rule are frequently used when individuals do not turn over real or personal property, or banks or other financial institutions refuse to recognize a personal representative's authority.

Many of us thought that these strong laws were enough protection for a personal representative to deal with digital assets. However, the problem with digital assets is some federal laws restrict these rights and user agreements can also interfere with what rights a successor-in-interest may have to administer these assets.

As an aside, from a practical standpoint, in the more than 20 years I have been practicing, I have yet to have a client who had a problem with this type of asset.

I would also like to draw attention to the public statement issued by the Taxation Section of the DC Bar supporting the enactment of this uniform law. I have attached a copy of that public statement to my testimony, and it is available on the DC Bar's website.

A small detail I would suggest is to change the use of the word "executor" to "personal representative". We have not used the word "executor" in the District for many, many year. (This is found on lines 22 and 121. [There also seems to a problem with lines 226 to 254 with the title of the sections and the Section number 21-2510 being repeated.]

I would be happy to answer any questions you may have. Thank you.



D I S T R I C T O F C O L U M B I A B A R
Taxation Section

D.C. Bar Taxation Section Statement of Support for the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)

The views expressed herein represent only those of the Taxation Section¹ of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

The D.C. Bar Taxation Section Steering Committee has considered the Revised Uniform Fiduciary Access to Digital Assets Act ("RUFADAA"). RUFADAA updates state fiduciary law for the Internet age by providing for fiduciary management of digital assets in accordance with the user's estate plan, while at the same time ensuring that a user's private electronic communications remain private. The Steering Committee supports enactment of RUFADAA in the District of Columbia, as such act would allow D.C. residents to better plan for the management and disposition of their digital assets in the event of their incapacity or death. Additionally, the Steering Committee supports an early enactment of RUFADAA in D.C. as a means of building support for the enactment of RUFADAA in other states, thereby securing nationwide uniformity on this important legal issue.

Today, access to an individual's digital assets is governed by a terms of service ("TOS") agreement between the company storing those assets on its server (the "custodian") and the user. These agreements typically grant only the user lawful access to such assets. This creates a problem, however, when a user is no longer capable of accessing or managing such assets due to incapacity or death.

RUFADAA addresses this issue by providing access to digital assets for four types of fiduciaries: (i) executors of a decedent's estate, (ii) court-appointed guardians or conservators, (iii) agents appointed under powers of attorney, and (iv) trustees. Such access is determined under a multi-tiered priority system. First, any online tool provided by the custodian that allows the user to grant another person access to his or her digital assets or to direct the deletion of such assets will control. Second, if no such online tool is available or utilized by the user, then the user may direct the management and distribution of his or her digital assets through a will, trust, power of attorney, or other written record. Third, in the absence of both of the above options, the TOS agreement's terms will determine a fiduciary's access. Finally, if none of the above scenarios apply, then RUFADAA's default rules will control. Under RUFADAA's default rules, a fiduciary may never access the content of electronic communications without the user's consent, but, when necessary, a fiduciary may have a right to access a catalogue of the user's electronic communications. With respect to other non-communication forms of digital assets, such assets are treated as intangible personal property. For example, a broad authorization to gain access to one's business files will grant access to all paper and electronic files.

RUFADAA provides much-needed updates to state fiduciary law, and successfully balances a fiduciary's need for access with a user's concerns for privacy. Accordingly, the Steering Committee supports enactment of RUFADAA in the District of Columbia.

¹ On January 7, 2016, the Steering Committee of the Taxation Section voted without dissent (8-0), with one abstention, to adopt this public statement.



D I S T R I C T O F C O L U M B I A B A R
Estates, Trusts and Probate Law Section

D.C. Bar Estates, Trusts and Probate Law Section/Community Statement of Support for the
Uniform Fiduciary Access to Digital Assets Act (UFADAA)

*The views expressed herein represent only those of the Estates, Trusts and Probate Law
Section/Community of the District of Columbia Bar and not those of the D.C. Bar or of its Board
of Governors.¹*

The D.C. Bar Estates, Trusts and Probate Law Section/Community Steering Committee supports the enactment of the Uniform Fiduciary Access to Digital Assets Act of 2017 which has been introduced to the City Council as Bill 22-1099 (the "UFADAA").

The UFADAA is based on a uniform law and provides for fiduciaries – trustees, personal representatives, and conservators, to manage the digital assets of a user in accordance with the user's estate plan or with the powers of court appointed fiduciaries.

The Steering Committee supports this bill for the reasons set forth in the Public Statement issued by the Taxation Section on the proposed Revised Uniform Fiduciary Access to Digital Assets Act ("RUFADAA") on January 7, 2016.

¹ The Steering Committee of the Estates, Trusts and Probate Law Section/Community voted on this proposed public statement via email on 5/30/17. The results of the vote were: yeas (7): Jennifer C. Concino, Giannina "Gina" Lynn, Stephanie Perry, Christopher Guest, Eli Guiterman, Kathy Mancusi and Andrew "Chip" Richardson; abstain (2): Karla E. Saguil, and Cecelia Steiner-Smith; and nays (0).



June 1, 2017

Founders

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James Lecesne

DC Council

Committee on the Judiciary
1350 Pennsylvania Ave. NW
Washington, DC 20004

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Re: Testimony regarding B22-199, Uniform Fiduciary Access to Digital Assets Act

Dear Chairman Allen:

The Trevor Project (Trevor), a not-for-profit organization providing services to lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth, is pleased to offer this written testimony to share concerns and ask for an amendment to exempt a social media site run by Trevor from being included in the requirements of B22-199, the Uniform Fiduciary Access to Digital Assets Act.

The implied goal of this bill is to make it easier for executors/trustees/fiduciary's to uncover and gain access to accounts to enable them to settle the estate of a deceased person, including minors. Trevor recognizes that assets are being managed via email and online portals much more frequently than in the past and perhaps it is time for legislative reforms to allow these accounts to be accessed easier. We neither support nor oppose the underlying goals of this bill. We are concerned that certain online programs for youth may be exposed to disclosure if an amendment to the bill is not made. Disclosures for these particular accounts could have severe and even fatal consequences.

As the leading national organization providing crisis intervention and suicide prevention services to LGBTQ youth ages 13 - 24 years old The Trevor Project works to save young lives through our accredited free and confidential lifeline; our secure instant messaging services which provide live help and intervention; our social networking community for LGBTQ youth; and our in-school workshops, educational materials, online resources, and advocacy. Unfortunately our services are very much needed as evidenced by these shocking statistics: suicide is the 2nd leading cause of death among young people ages 10 to 24;¹ the rate of suicide attempts is four times greater for lesbian, gay and bisexual youth and two times greater for questioning

The Trevor Project

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Steve Mendelsohn
Interim Executive Director

youth than that of straight youth;ⁱⁱ and in a national study, 40% of transgender adults reported having made a suicide attempt while 92% of these individuals reported having attempted suicide before the age of 25.ⁱⁱⁱ It is critical that youth struggling with their sexual orientation or gender identity (SOGI) receive needed support to help reduce risk factors for suicide. It's equally important for these same youth to increase their protective factors against suicide, and a program offered by us called TrevorSpace seeks to do just that.

TrevorSpace is a social media program exclusively for LGBTQ youth ages 13 – 24 years old to build connections, increase peer support and reduce suicide risk. It is a monitored site that works very similar to Facebook in that users have “profiles” and can engage in public discussions and also have the ability to message privately with another user. Over 150,000 youth have joined TrevorSpace since its inception in YEAR. Users often support each other during difficult times and many log-on to find out they are not the only LGBTQ person in their community as they may have previously thought.

One of the things that contribute to TrevorSpace's success is that users know their information is private and confidential. This allows users to feel comfortable communicating about some of their most closely-held secrets, which for many can include their SOGI identity. Realizing that one is LGBTQ often prompts many confusing feelings and emotions. While some may be relieved to finally figure out their sexual orientation or gender identity, this realization is often accompanied by apprehension and fear. Since a person's sexual orientation or gender identity cannot be determined simply by looking at them, each LGBTQ person must make their own individually guided decision about when and whether to share that information with others.

This bill as currently written is so broad as to potentially encompass information from a TrevorSpace user's account. Allowing that to happen could have extremely negative consequences.

First, it would be an extremely rare occurrence if a deceased TrevorSpace user did discuss assets or information needed to settle their legal affairs. Thus, there is an almost 100% guarantee that allowing access to TrevorSpace accounts for deceased individuals will not accomplish anything with respect to the intended outcome of this bill. Additionally, worrying that the contents of one's TrevorSpace messages

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could be divulged if the receiver dies will have at best a chilling effect on TrevorSpace users and at worst will see all TrevorSpace users abandon the program.

Secondly, allowing access to a deceased user's accounts not only provides information about that person, but also all the other living person's with whom the user communicated, which may lead to youth being "outed" what that is not the subject's wishes. All of the decedent's friends, contacts and others with whom they have communicated in private will have their confidentiality violated if this bill passes in its current form. Through the new rights in this bill, parents or other executors may uncover living people's sexual orientation or gender identity and could "out" them in any number of ways. This would clearly create a dangerous and even life threatening situation for people who shared their secrets on-line with someone who has died.

There are many important considerations facing a young person who is struggling with their sexual and/or gender identities. For many, coming out can lead to life-threatening consequences. The "coming out" process can be very challenging and scary because one can never know how others are going to react to that news. If a minor comes out to their parents who are not accepting or supportive, the risks are numerous. Forty percent of all homeless youth in the U.S. are LGBTQ, many of whom were kicked out of their homes after coming out to their parents. Harassment, discrimination and the very real risk of violence and even murder play key roles in determining when and to whom individuals comes out.

The work of Dr. Caitlin Ryan, a nationally recognized expert on LGBTQ youth has shown that family acceptance is critical to the health and well-being of LGBTQ youth. Acceptance can be expressed in the form of open and willing communication, understanding of the youth's identity as inherent and not a choice, and an absence of any efforts to try and change the individual's identity. Through her extensive research, Dr. Ryan found that LGBT youth from highly rejecting families were more than eight times as likely to attempt suicide than those who came from accepting familial environments.^{iv} As one can see, there are extreme consequences that may happen as a result of information released from TrevorSpace accounts.

We believe all of these negative repercussions are sufficient enough to warrant an amendment to prevent against them. The best place for language to be inserted is in the chapter applicability section of the bill (becoming § 21-2503(d)) and should read:

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^{iv} Family Acceptance Project™. (2009). Family rejection as a predictor of negative health outcomes in white and Latino lesbian, gay, and bisexual young adults. *Pediatrics*. 123(1), 346-52.

^v Toomey, R.B., Ryan, C.R., Diaz, R.M., Russell, S.T. (2017). Coping with sexual orientation-related minority stress. *Journal of Homosexuality*.

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**Statement of James C. McKay, Jr.
Chair, District of Columbia Uniform Law Commission**

**Before the
Committee on the Judiciary and Public Safety
Councilmember Charles Allen, Chairperson**

On

Bill 22-199

The Uniform Fiduciary Access to Digital Assets Act of 2017



District of Columbia Uniform Law Commission

June 1, 2017

**Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004**

Chairperson Allen and members of the Committee:

Good morning. I am James McKay, Chair of the District of Columbia Uniform Law Commission. I appreciate the opportunity to appear before you today to testify in support of Bill 22-199, the Uniform Fiduciary Access to Digital Assets Act of 2017.

This uniform act was completed by the National Conference of Commissioners on Uniform State Laws in 2015 and already has been enacted in 33 states and, this year, has been introduced in another 10 states.

The act modernizes fiduciary law for the Internet age. Fiduciaries are the people appointed to manage our property when we die or lose the capacity to manage it ourselves. Nearly everyone today has digital assets, such as documents, photographs, e-mail, and social-media accounts. However, fiduciaries are often prevented from accessing those accounts by password protection or restrictive terms of service. Digital assets may have real value, both monetary and sentimental, but they also present novel privacy concerns.

The act provides legal authority for fiduciaries to manage digital assets in accordance with a user's estate plan, while protecting the user's private communications from unwarranted disclosure. The principal features of the act are as follows:

(1) It gives Internet users control by allowing them to specify whether their digital assets should be preserved, distributed to heirs, or destroyed.

(2) It provides appropriate default rules governing access to digital assets for executors of a decedent's estate, agents under a power of attorney, conservators, and trustees.

(3) It respects privacy interests by prohibiting the companies that store communications from releasing them to fiduciaries unless the user consented to disclosure.

(4) It provides uniformity to ensure that fiduciaries in every state will have equal access to digital assets and custodians will have a single legal standard with which to comply.

And (5), it works hand-in-hand with federal law, including the federal Copyright Act and Electronic Communications Privacy Act.

In sum, this uniform act addresses an important need in today's information society.

I urge the Committee to report favorably on this uniform act. I would be pleased to answer any questions.

Government of the District of Columbia
UNIFORM LAW COMMISSION



BY E-MAIL

June 15, 2017

The Honorable Charles Allen
Chairperson
Committee on the Judiciary and Public Safety
Council of the District of Columbia
The John A. Wilson Building, Suite 110
1350 Pennsylvania Avenue, NW
Washington, DC 20004

RE: Follow up to testimony at the June 1, 2017 hearing on Bill 22-199, the Uniform Fiduciary Access to Digital Assets Act of 2017.

Dear Councilmember Allen:

Thank you very much for holding a hearing on the Uniform Fiduciary Access to Digital Assets Act of 2017 and two other uniform acts. Since the hearing, two more states have enacted this uniform act, bringing the current total number of enactments to 35. Moreover, the uniform act has been introduced this year in nine additional states. It is expected to be enacted uniformly throughout the country in a year or two. As the D.C. Bar Taxation Section remarked in its formal endorsement, the act "updates state fiduciary law for the Internet age by providing for fiduciary management of digital assets in accordance with the user's estate plan, while at the same time ensuring that a user's private electronic communications remain private."

We were pleased that the witnesses at the hearing spoke overwhelmingly in favor of the uniform act, including Legal Counsel for the Elderly, whose pro-bono manager, Sherly Miller, testified that it was needed to protect elderly or incapacitated citizens from dire consequences, such as evictions and utilities shut-offs, because they have lost the capacity to manage their on-line accounts and payments.

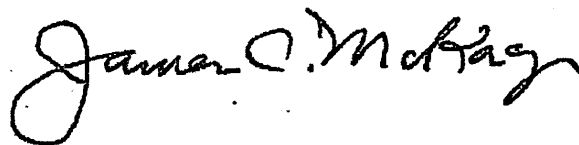
One witness, Amy Loudermilk, testifying for the Trevor Project, has asked the Committee to amend the uniform act to make an exception for its social media accounts because she is concerned that it would permit the contents of a deceased user's account to be divulged. We oppose this proposal. We do not believe that this a valid concern because the act already contains very robust protections for the privacy of electronic communications. Moreover, it is essential that this act be *uniformly* adopted. It is significant that none of the 35 states that have enacted the uniform act have adopted such exemptions.

The drafters of the uniform act were very concerned of the need to protect the privacy of users' communications. The act prohibits a fiduciary from obtaining access to the content of a deceased user's communications unless the user has *expressly* authorized such access. The "contents" of an electronic communication are broadly defined to include the subject line and body of a user's e-mail messages, text messages, and other messages between private parties including non-public social media postings. The act has four tiers in the hierarchy of fiduciary access, two of which are under the control of the custodian of the information—in this case the Trevor Project. The first line of defense of the a user's privacy is the on-line tool for fiduciary access provided, and defined by, the custodian. The Trevor Project may provide such a tool to limit the extent of access to information on a user's account by others. A user who does not fill out a form to obtain such a tool may specify the extent of access in a fiduciary instrument, but would have to expressly permit another to have access to the user's private content. The third line of defense is the general policies of the custodian as to access to electronic information. The Trevor Project, like other custodians of private information, is free to impose policies that strictly limit access to its users' communications. The fourth line of defense is the default rules of the uniform act, which would apply only if none of the previous tiers applies. These default rules prohibit anyone from accessing the content of a user's communications. Thus, the uniform act has four layers of protection of the privacy of a user's communications, and the proposed amendment is unnecessary.

In addition to being unnecessary, the proposal would be harmful. If adopted, an exemption for a particular type of social media accounts would defeat one of the most important goals of the act—uniformity. As the D.C. Bar Taxation Section remarked, the Council's enactment of this act is needed to "secur[e] nationwide uniformity on this important legal issue." Significantly, none of the 35 states that have adopted the uniform act have exempted any types of social media accounts from its scope. The uniform act was endorsed, among others, by major Internet service providers, such as Google and Facebook, with the expectation that the act would be uniformly adopted. Exemptions in one jurisdiction for particular custodians not only are unnecessary and would be destructive of uniformity; they would be ineffective. A user domiciled in another state, such as Maryland or Virginia, would not be subject to the exemption. Therefore, we urge the Committee not make the proposed amendment to this uniform act.

We would be pleased to answer any questions that you or the members of the Committee or its staff may have.

Sincerely,

A handwritten signature in black ink, reading "James C. McKay, Jr." in a cursive script.

James C. McKay, Jr.
Chair

cc: Katherine Mitchell
Professor Naomi Cahn
Benjamin Orzeske

ATTACHMENT F


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: November 23, 2020

SUBJECT: Fiscal Impact Statement – Uniform Fiduciary Access to Digital Assets Act of 2020

REFERENCE: Bill 23-141, Draft Committee Print as circulated on November 20, 2020

Conclusion

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

Background

The bill implements a uniform law¹ that establishes that a fiduciary can manage digital assets and sets parameters for the custodian² to share a user's digital assets. The bill gives a fiduciary a duty of care, duty of loyalty, and duty of confidentiality over the digital assets of a decedent, protected person, principal, or settlor. The bill establishes the fiduciary's rights to access digital assets directly, if applicable, or request access from a custodian.

The bill also sets the policies and procedures around when and how a custodian is authorized to release digital assets, a catalogue of electronic communications, and the contents of those communications. Custodians can also provide users with an online tool to specify whether and how much of a user's digital assets can be disclosed to a designated recipient. The bill enumerates procedures for disclosure of digital assets of a deceased individual, electronic communications and digital assets of a principal, digital assets held in trust, and digital assets of a protected person.

¹ As drafted by the National Conference of Commissioners on Uniform Laws.

² A custodian is a person that carries, maintains, processes, receives, or stores a user's digital assets.

The Honorable Phil Mendelson

FIS: Bill 23-141, "Uniform Fiduciary Access to Digital Assets Act of 2020," Draft Committee Print as circulated on November 20, 2020

Financial Plan Impact

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. Any legal actions taken under this bill will most frequently involve private individuals and entities. If the Office of the Attorney General (OAG) needed to participate in any actions under this bill on behalf of the District or otherwise, OAG can absorb those costs within its existing budgeted resources.

ATTACHMENT G



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Councilmember Charles Allen

FROM: Nicole L. Streeter, General Counsel *NLS*

DATE: November 21, 2020

RE: Legal sufficiency determination for Bill 23-141, the
Uniform Fiduciary Access to Digital Assets Act of
2020

The measure is legally and technically sufficient for Council consideration.

The bill would amend Title 21 of the District of Columbia Official Code to allow holders of accounts with digital assets to give access to those accounts to fiduciaries, including executors, agents, conservators, and trustees. The bill would also provide default rules governing access by fiduciaries to these accounts and provide immunity from liability for custodians of accounts that comply with a fiduciary's apparent authorized request for access.

I am available if you have any questions.

ATTACHMENT H

Committee Print
B23-0141
Committee on the Judiciary & Public Safety
November 23, 2020

A BILL

23-0141

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 21 of the District of Columbia Official Code to enact the Revised Uniform Fiduciary Access to Digital Assets Act to allow holders of accounts with digital assets to give access to these accounts to fiduciaries, including executors, agents, conservators, and trustees; to provide default rules governing access by fiduciaries to these accounts; and to provide immunity from liability for custodians of accounts that comply with a fiduciary's apparent authorized request for access.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Uniform Fiduciary Access to Digital Assets Act of 2020".

Sec. 2. Title 21 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new chapter heading to read as follows:

"25. Uniform Fiduciary Access to Digital Assets Act."

(b) A new Chapter 25 is added to read as follows:

"CHAPTER 25. UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.

"Section

"21-2501. Short title.

"21-2502. Definitions.

"21-2503. Applicability.

37 “21-2504. User direction for disclosure of digital assets.
38 “21-2505. Terms-of-service agreement.
39 “21-2506. Procedure for disclosing digital assets.
40 “21-2507. Disclosure of contents of electronic communications of deceased user.
41 “21-2508. Disclosure of other digital assets of deceased user.
42 “21-2509. Disclosure of contents of electronic communications of principal.
43 “21-2510. Disclosure of other digital assets of principal.
44 “21-2511. Disclosure of digital assets held in trust when trustee is original user.
45 “21-2512. Disclosure of contents of electronic communications held in trust when trustee
46 not original user.
47 “21-2513. Disclosure of other digital assets held in trust when trustee not original user.
48 “21-2514. Disclosure of digital assets to conservator of protected individual.
49 “21-2515. Fiduciary duty and authority.
50 “21-2516. Custodian compliance and immunity.
51 “21-2517. Uniformity of application and construction.
52 “21-2518. Relation to Electronic Signatures in Global and National Commerce Act.
53 “§ 21-2501. Short title.
54 “This chapter may be cited as the “Uniform Fiduciary Access to Digital Assets Act of
55 2020”.
56 “§ 21-2502. Definitions.
57 “For the purposes of this chapter, the term:

58 “(1) “Account” means an arrangement under a terms-of-service agreement in
59 which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or
60 provides goods or services to the user.

61 “(2) “Agent” means an attorney-in-fact granted authority under a durable or
62 nondurable power of attorney.

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

64 “(4) “Catalogue of electronic communications” means information that identifies
65 each person with which a user has had an electronic communication, the time and date of the
66 communication, and the electronic address of the person. The term “catalogue of electronic
67 communications” does not include the content of an electronic communication.

68 “(5) “Conservator” means a person appointed by a court to manage the estate of a
69 living individual. The term “conservator” includes a limited conservator.

70 “(6) “Content of an electronic communication” means information concerning the
71 substance or meaning of the communication which:

72 “(A) Has been sent or received by a user;

73 “(B) Is in electronic storage by a custodian providing an electronic
74 communication service to the public or is carried or maintained by a custodian providing a
75 remote-computing service to the public; and

76 “(C) Is not readily accessible to the public.

77 “(7) “Custodian” means a person that carries, maintains, processes, receives, or
78 stores a digital asset of a user.

79 “(8) “Designated recipient” means a person chosen by a user using an online tool
80 to administer digital assets of the user.

81 “(9) “Digital asset” means an electronic record in which an individual has a right
82 or interest. The term “digital asset” does not include an underlying asset or liability unless the
83 asset or liability is itself an electronic record.

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

86 “(11) “Electronic communication” shall have the same meaning as provided in
87 18 U.S.C. § 2510(12).

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

90 “(13) “Fiduciary” means an original, additional, or successor personal
91 representative, conservator, agent, or trustee. The term “fiduciary” includes a person who
92 receives money for an individual as a guardian pursuant to § 21-2047(b)(1).

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

95 “(15) “Online tool” means an electronic service provided by a custodian that
96 allows the user, in an agreement distinct from the terms-of-service agreement between the
97 custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a
98 third person.

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

102 “(17) “Personal representative” means an executor, administrator, special
103 administrator, or person that performs substantially the same function under laws of the District
104 of Columbia other than this chapter.

105 “(18) “Power of attorney” means a record that grants an agent authority to act in
106 the place of a principal.

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

109 “(20) “Protected individual” means an individual for whom a conservator has
110 been appointed. The term “protected individual” includes an individual for whom an application
111 for the appointment of a conservator is pending.

112 “(21) “Record” means information that is inscribed on a tangible medium or that
113 is stored in an electronic or other medium and is retrievable in perceivable form.

114 “(22) “Remote-computing service” means a custodian that provides to a user
115 computer processing services or the storage of digital assets by means of an electronic
116 communications system, as that term is defined in 18 U.S.C. § 2510(14).

117 “(23) “Superior Court” means the Superior Court of the District of Columbia.

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

120 “(25) “Trustee” means a fiduciary with legal title to property under an agreement
121 or declaration that creates a beneficial interest in another. The term “trustee” includes a successor
122 trustee.

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

“(27) “Will” includes a codicil, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.

“§ 21-2503. Applicability.

“(a) This chapter applies to:

“(1) A fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this chapter;

“(2) A personal representative acting for a decedent who died before, on, or after the effective date of this chapter;

“(3) A conservatorship proceeding commenced before, on, or after the effective date of this chapter; and

“(4) A trustee acting under a trust created before, on, or after the effective date of this chapter.

“(b) This chapter applies to a custodian if the user resides in the District or resided in the District at the time of the user’s death.

“(c) This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer’s business.

“§ 21-2504. User direction for disclosure of digital assets.

“(a) A user may use an online tool to direct a custodian to disclose or not to disclose to a designated recipient some or all of the user’s digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

“(b) If a user has not used an online tool to give direction under subsection (a) of this section, or if the custodian has not provided an online tool, the user may allow or prohibit, in a will, trust, power of attorney, or other record, 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.

“(c) A user’s direction under subsection (a) or (b) of this section overrides 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.

“§ 21-2505. Terms-of-service agreement.

“(a) This chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

“(b) This chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

“(c) A fiduciary’s or designated recipient’s access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction pursuant to § 21-2504.

“§ 21-2506. Procedure for disclosing digital assets.

“(a) When disclosing digital assets of a user under this chapter, the custodian may at its sole discretion:

“(1) Grant a fiduciary or designated recipient full access to the user’s account;

“(2) Grant a fiduciary or designated recipient partial access to the user’s account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

“ (3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

“(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

“(c) A custodian may decline to disclose under this chapter a digital asset deleted by a user.

“(d) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user’s digital assets, the custodian may decline to disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the Superior Court to disclose:

“(1) A subset limited by date of the user’s digital assets;

“(2) All of the user’s digital assets to the fiduciary or designated recipient;

“(3) None of the user’s digital assets; or

“(4) All of the user’s digital assets to the Superior Court for review in camera.

“§ 21-2507. Disclosure of contents of electronic communications of deceased user.

“If a deceased user consented or, in the absence of direction pursuant to § 21-2504, the Superior Court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

“(1) A written request for disclosure in physical or electronic form;

“(2) A certified copy of the death certificate of the user;

191 “(3) A certified copy of the letter of appointment of the representative or a small-
192 estate affidavit or court order;

193 “(4) Unless the user provided direction using an online tool, a copy of the user’s
194 will, trust, power of attorney, or other record evidencing the user’s consent to disclosure of the
195 content of electronic communications; and

196 “(5) If requested by the custodian:

197 “(A) A number, username, address, or other unique subscriber or account
198 identifier assigned by the custodian to identify the user’s account;

199 “(B) Evidence linking the account to the user; or

200 “(C) A finding by the Superior Court that:

201 “(i) The user had a specific account with the custodian, identifiable
202 by the information specified in subparagraph (A) of this paragraph;

203 “(ii) Disclosure of the content of electronic communications of the
204 user would not violate 18 U.S.C. § 2701 *et seq.*, 47 U.S.C. § 222, or other applicable laws;

205 “(iii) Unless the user provided direction using an online tool, the
206 user consented to disclosure of the content of electronic communications; or

207 “(iv) Disclosure of the content of electronic communications of the
208 user is reasonably necessary for administration of the estate.

209 “§ 21-2508. Disclosure of other digital assets of deceased user.

210 “Unless the user prohibited disclosure of digital assets or the Superior Court directs
211 otherwise, a custodian shall disclose to the personal representative of the estate of a deceased
212 user 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 representative gives the custodian:

“(1) A written request for disclosure in physical or electronic form;

“(2) A certified copy of the death certificate of the user;

“(3) A certified copy of the letter of appointment of the representative or a small-estate affidavit or court order; and

“(4) If requested by the custodian:

“(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) An affidavit stating that disclosure of the user’s digital assets is reasonably necessary for administration of the estate; or

“(D) A finding by the Superior Court that:

“(i) The user had a specific account with the custodian, identifiable by the information specified in subparagraph (A) of this paragraph; or

“(ii) Disclosure of the user’s digital assets is reasonably necessary for administration of the estate.

“§ 21-2509. Disclosure of content of electronic communications of 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 Superior Court, a custodian shall disclose to the agent the content of electronic communications sent or received by the principal if the agent gives the custodian:

“(1) A written request for disclosure in physical or electronic form;

236 “(2) An original or copy of the power of attorney expressly granting the agent
237 authority over the content of electronic communications of the principal;

238 “(3) A certification by the agent, under penalty of perjury, that the power of
239 attorney is in effect; and

240 “(4) If requested by the custodian:

241 “(A) A number, username, address, or other unique subscriber or account
242 identifier assigned by the custodian to identify the principal’s account; or

243 “(B) Evidence linking the account to the principal.

244 “§ 21-2510. Disclosure of other digital assets of principal.

245 “Unless otherwise ordered by the Superior Court, directed by the principal, or provided
246 by a power of attorney, a custodian shall disclose to an agent with specific authority over digital
247 assets or general authority to act on behalf of a principal a catalogue of electronic
248 communications sent or received by the principal and digital assets, other than the content of
249 electronic communications, of the principal if the agent gives the custodian:

250 “(1) A written request for disclosure in physical or electronic form;

251 “(2) An original or a copy of the power of attorney that gives the agent specific
252 authority over digital assets or general authority to act on behalf of the principal;

253 “(3) A certification by the agent, under penalty of perjury, that the power of
254 attorney is in effect; and

255 “(4) If requested by the custodian:

256 “(A) A number, username, address, or other unique subscriber or account
257 identifier assigned by the custodian to identify the principal’s account; or

258 “(B) Evidence linking the account to the principal.

“§ 21-2511. Disclosure of digital assets held in trust when trustee is original user.

“Unless otherwise ordered by the Superior Court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

“§ 21-2512. Disclosure of contents of electronic communications held in trust when trustee not original user.

“Unless otherwise ordered by the Superior 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 account of the trust if the trustee gives the custodian:

“(1) A written request for disclosure in physical or electronic form;

“(2) A certified copy of the trust instrument, or a certification of the trust pursuant to § 19-1310.13 that includes consent to disclosure of the content of electronic communications to the trustee;

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

“(4) If requested by the custodian:

“(A) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust’s account; or

“(B) Evidence linking the account to the trust.

“§ 21-2513. Disclosure of other digital assets held in trust when trustee not original user.

“Unless otherwise ordered by the Superior 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:

“(1) A written request for disclosure in physical or electronic form;

“(2) A certified copy of the trust instrument or a certification of the trust under § 19-1310.13;

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

“(4) If requested by the custodian:

“(A) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust’s account; or

“(B) Evidence linking the account to the trust.

“§ 21-2514. Disclosure of digital assets to conservator of protected individual.

“(a) After an opportunity for a hearing under § 21-2054, the Superior Court may grant a conservator access to the digital assets of a protected individual.

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

“(1) A written request for disclosure in physical or electronic form;

305 “(2) A certified copy of the court order that gives the conservator authority over
306 the digital assets of the protected individual; and

307 “(3) If requested by the custodian:

308 “(A) A number, username, address, or other unique subscriber or account
309 identifier assigned by the custodian to identify the account of the protected individual; or

310 “(B) Evidence linking the account to the protected individual.

311 “(c) A conservator with general authority to manage the assets of a protected individual
312 may request a custodian of the digital assets of the protected individual to suspend or terminate
313 an account of the protected individual for good cause. A request made under this section shall be
314 accompanied by a certified copy of the court order giving the conservator authority over the
315 protected individual’s property.

316 “§ 21-2515. Fiduciary duty and authority.

317 “(a) The legal duties imposed on a fiduciary charged with managing tangible property
318 apply to the management of digital assets, including:

319 “(1) The duty of care;

320 “(2) The duty of loyalty; and

321 “(3) The duty of confidentiality.

322 “(b) A fiduciary’s or designated recipient’s authority with respect to a digital asset of a
323 user:

324 “(1) Except as otherwise provided in § 21-2504, is subject to the applicable terms
325 of service;

326 “(2) Is subject to other applicable law, including copyright law;

327 “(3) In the case of a fiduciary, is limited by the scope of the fiduciary’s duties;
328 and

329 “(4) Shall not be used to impersonate the user.

330 “(c) A fiduciary with authority over the property of a decedent, protected individual,
331 principal, or settlor may access any digital asset in which the decedent, protected individual,
332 principal, or settlor had a right or interest and that is not held by a custodian or subject to a
333 terms-of-service agreement.

334 “(d) A fiduciary acting within the scope of the fiduciary’s duties is an authorized user of
335 the property of the decedent, protected individual, principal, or settlor for the purpose of,
336 applicable federal or District computer-fraud and unauthorized-computer-access laws.

337 “(e) A fiduciary with authority over the tangible, personal property of a decedent,
338 protected individual, principal, or settlor:

339 “(1) May access the property and any digital asset stored in it; and

340 “(2) Is an authorized user for the purpose of computer-fraud and unauthorized-
341 computer-access laws.

342 “(f) A custodian may disclose information in an account to a fiduciary of the user when
343 the information is required to terminate an account used to access digital assets licensed to the
344 user.

345 “(g) A fiduciary of a user may request a custodian to terminate the user’s account. A
346 request for termination must be in writing, in either physical or electronic form, and
347 accompanied by:

348 “(1) If the user is deceased, a certified copy of the death certificate of the user;

349 “(2) A certified copy of the letter of appointment of the representative or a small-
350 estate affidavit or court order, power of attorney, or trust giving the fiduciary authority over the
351 account; and

352 “(3) If requested by the custodian:

353 “(A) A number, username, address, or other unique subscriber or account
354 identifier assigned by the custodian to identify the user’s account;

355 “(B) Evidence linking the account to the user; or

356 “(C) A finding by the Superior Court that the user had a specific account
357 with the custodian, identifiable by the information specified in subparagraph (A) of this
358 paragraph.

359 “§ 21-2516. Custodian compliance and immunity.

360 “(a) Not later than 60 days after receipt of the information required under §§ 21-2507-21-
361 2514, a custodian shall comply with a request under this chapter from a fiduciary or designated
362 recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the
363 fiduciary or designated recipient may apply to the Superior Court for an order directing
364 compliance.

365 “(b) An order under subsection (a) of this section directing compliance must contain a
366 finding that compliance is not in violation of 18 U.S.C. § 2702.

367 “(c) Unless a custodian has been notified that a user is deceased, the custodian shall
368 notify the user that a request for disclosure or to terminate an account was made under this
369 chapter.

“(d) A custodian may deny a request under this chapter 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 following the receipt of the fiduciary’s request.

“(e) This chapter does not limit a custodian’s ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order which:

“(1) Specifies that an account belongs to the protected individual or principal;

“(2) Specifies that there is sufficient consent from the protected individual or principal to support the requested disclosure; and

“(3) Contains a finding required by law other than this chapter.

“(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 chapter.

“§ 21-2517. 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.

“§ 21-2518. Relation to Electronic Signatures in Global and National Commerce Act.

“This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (15 U.S.C. § 7001 *et seq.*; 114 Stat. 464) (“ESGNCA”), but does not modify, limit, or supersede section 101(c) of the ESGNCA, or authorize electronic delivery of any of the notices described in section 103(b) the ESGNCA.”.

Sec. 3. Fiscal impact statement.

391 The Council adopts the fiscal impact statement in the committee report as the fiscal
392 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
393 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

394 Sec. 4. Effective date.

395 This act shall take effect following approval by the Mayor (or in the event of veto by the
396 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
397 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
398 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
399 Columbia Register.