
A BILL FOR AN ACT

RELATING TO FIDUCIARY ACCESS TO DIGITAL ASSETS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

6 **§ -1 Short title.** This chapter may be cited as the
7 Uniform Fiduciary Access to Digital Assets Act.

8 **§ -2 Definitions.** In this chapter:

9 "Account holder" means a person that has entered into a
10 terms-of-service agreement with a custodian or a fiduciary for
11 the person.

12 "Agent" means an attorney in fact granted authority under a
13 durable or nondurable power of attorney.

14 "Carries" means engages in the transmission of electronic
15 communications.

16 "Catalogue of electronic communications" means information
17 that identifies each person with which an account holder has had



1 an electronic communication, the time and date of the
2 communication, and the electronic address of the person.

3 "Conservator" means a person appointed by a court to manage
4 the estate of a living individual. The term includes a limited
5 conservator.

6 "Content of an electronic communication" means information
7 concerning the substance or meaning of the communication which:

- 8 (1) Has been sent or received by an account holder;
- 9 (2) Is in electronic storage by a custodian providing an
10 electronic-communication service to the public or is
11 carried or maintained by a custodian providing a
12 remote-computing service to the public; and
- 13 (3) Is not readily accessible to the public.

14 "Court" means the circuit court in this State having
15 jurisdiction in matters relating to powers of attorney, in the
16 case of a fiduciary or agent acting under a will or power of
17 attorney, a circuit court in this State having jurisdiction in
18 matters relating to the affairs of decedents, in the case of a
19 personal representative, a circuit court in this State having
20 jurisdiction in matters relating to the affairs of decedents or
21 the family court, depending on which court has subject matter



1 jurisdiction under section 560:5-106, in the case of a
2 conservatorship, or a court which has jurisdiction under section
3 560:7-204, in the case of a trustee acting under a trust.

4 "Custodian" means a person that carries, maintains,
5 processes, receives, or stores a digital asset of an account
6 holder.

7 "Digital asset" means a record that is electronic. The
8 term does not include an underlying asset or liability unless
9 the asset or liability is itself a record that is electronic.

10 "Electronic" means relating to technology having
11 electrical, digital, magnetic, wireless, optical,
12 electromagnetic, or similar capabilities.

13 "Electronic communication" has the same meaning as the
14 definition in 18 U.S.C. Section 2510(12), as amended.

15 "Electronic-communication service" means a custodian that
16 provides to an account holder the ability to send or receive an
17 electronic communication.

18 "Fiduciary" means an original, additional, or successor
19 personal representative, conservator, agent, or trustee.



1 "Governing instrument" means a will, trust, instrument
2 creating a power of attorney, or other dispositive or nominative
3 instrument.

4 "Information" means data, text, images, videos, sounds,
5 codes, computer programs, software, databases, or the like.

6 "Person" means an individual, estate, business or nonprofit
7 entity, public corporation, government or governmental
8 subdivision, agency, or instrumentality, or other legal entity.

9 "Personal representative" means an executor, administrator,
10 special administrator, or person that performs substantially the
11 same function under law of this state other than this chapter.

12 "Power of attorney" means a record that grants an agent
13 authority to act in the place of a principal.

14 "Principal" means an individual who grants authority to an
15 agent in a power of attorney.

16 "Protected person" means an individual for whom a
17 conservator has been appointed. The term includes an individual
18 for whom an application for the appointment of a conservator is
19 pending.



1 "Record" means information that is inscribed on a tangible
2 medium or that is stored in an electronic or other medium and is
3 retrievable in perceivable form.

4 "Remote-computing service" means a custodian that provides
5 to an account holder computer processing services or the storage
6 of digital assets by means of an electronic communications
7 system, as defined in 18 U.S.C. section 2510(14), as amended.

8 "Terms-of-service agreement" means an agreement that
9 controls the relationship between an account holder and a
10 custodian.

11 "Trustee" means a fiduciary with legal title to property
12 pursuant to an agreement or declaration that creates a
13 beneficial interest in another. The term includes a successor
14 trustee.

15 "Will" includes a codicil, testamentary instrument that
16 only appoints an executor, and instrument that revokes or
17 revises a testamentary instrument.

18 **§ -3 Applicability.** (a) This chapter applies to:

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



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

4 (3) A conservatorship proceeding, whether pending in a
5 court or commenced before, on, or after the effective
6 date of this chapter; and

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

9 (b) This chapter does not apply to a digital asset of an
10 employer used by an employee in the ordinary course of the
11 employer's business.

12 **§ -4 Access by personal representative to digital asset**
13 **of decedent.** Subject to section -8(b) and unless otherwise
14 ordered by the court or provided in the will of a decedent, the
15 personal representative of the decedent has the right to access:

16 (1) The content of an electronic communication that the
17 custodian is permitted to disclose under the
18 Electronic Communications Privacy Act, 18 U.S.C.
19 section 2702(b), as amended;

20 (2) Any catalogue of electronic communications sent or
21 received by the decedent; and

1 (3) Any other digital asset in which at death the decedent
2 had a right or interest.

3 **§ -5 Access by conservator to digital asset of protected**
4 **person.** Subject to section -8(b), the court, after an
5 opportunity for hearing under section 560:5-410 or section
6 560:5-414, may grant a conservator the right to access:

7 (1) The content of an electronic communication that the
8 custodian is permitted to disclose under the
9 Electronic Communications Privacy Act, 18 U.S.C.
10 section 2702(b), as amended;

11 (2) Any catalogue of electronic communications sent or
12 received by the protected person; and

13 (3) Any other digital asset in which the protected person
14 has a right or interest.

15 **§ -6 Access by agent to digital asset of principal.** (a)

16 To the extent a power of attorney expressly grants an agent
17 authority over the content of an electronic communication of the
18 principal and subject to section -8(b), the agent has the
19 right to access the content of an electronic communication that
20 the custodian is permitted to disclose under the Electronic



1 Communications Privacy Act, 18 U.S.C. section 2702(b), as
2 amended.

3 (b) Subject to Section 8(b) and unless otherwise ordered
4 by the court or provided by a power of attorney, an agent has
5 the right to access:

6 (1) Any catalogue of electronic communications sent or
7 received by the principal; and

8 (2) Any other digital asset in which the principal has a
9 right or interest.

10 **§ -7 Access by trustee to digital asset.** (a) Subject
11 to section -8(b) and unless otherwise ordered by the court or
12 provided in a trust, a trustee that is an original account
13 holder has the right to access any digital asset held in trust,
14 including any catalogue of electronic communications of the
15 trustee and the content of an electronic communication.

16 (b) Subject to section -8(b) and unless otherwise
17 ordered by the court or provided in a trust, a trustee that is
18 not an original account holder has the right to access:

19 (1) The content of an electronic communication that the
20 custodian is permitted to disclose under the



1 Electronic Communications Privacy Act, 18 U.S.C.
2 section 2702(b), as amended;

3 (2) Any catalogue of electronic communications sent or
4 received by the original or any successor account
5 holder; and

6 (3) Any other digital asset in which the original or any
7 successor account holder has a right or interest.

8 **§ -8 Fiduciary authority.** (a) A fiduciary that is an
9 account holder or has the right under this chapter to access a
10 digital asset of an account holder:

11 (1) Subject to the terms-of-service agreement, copyright
12 law, and other applicable law, may take any action
13 concerning the asset to the extent of the account
14 holder's authority and the fiduciary's power under the
15 law of this state other than this chapter;

16 (2) Has, for the purpose of applicable electronic privacy
17 laws, the lawful consent of the account holder for the
18 custodian to divulge the content of an electronic
19 communication to the fiduciary; and



1 (3) Is, for the purpose of applicable computer-fraud and
2 unauthorized-computer-access laws, including part IX,
3 chapter 708.

4 (b) Unless an account holder, after the effective date of
5 this chapter, agrees to a provision in a terms-of-service
6 agreement that limits a fiduciary's access to a digital asset of
7 the account holder by an affirmative act separate from the
8 account holder's assent to other provisions of the agreement:

9 (1) The provision is void as against the strong public
10 policy of this state; and

11 (2) The fiduciary's access under this chapter to a digital
12 asset does not violate the terms-of-service agreement
13 even if the agreement requires notice of a change in
14 the account holder's status.

15 (c) A choice-of-law provision in a terms-of-service
16 agreement is unenforceable against a fiduciary acting under this
17 chapter to the extent the provision designates law that enforces
18 a limitation on a fiduciary's access to a digital asset, and the
19 limitation is void under subsection (b).

20 (d) As to tangible personal property capable of receiving,
21 storing, processing, or sending a digital asset, a fiduciary



1 with authority over the property of a decedent, protected
2 person, principal, or settlor:

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

5 (2) Is an authorized user for purposes of any applicable
6 computer-fraud and unauthorized-computer-access laws,
7 including part IX, chapter 708.

8 **§ -9 Compliance.** (a) If a fiduciary with a right under
9 this chapter to access a digital asset of an account holder
10 complies with subsection (b), the custodian shall comply with
11 the fiduciary's request in a record for:

12 (1) Access to the asset;

13 (2) Control of the asset; and

14 (3) A copy of the asset to the extent permitted by
15 copyright law.

16 (b) If a request under subsection (a) is made by:

17 (1) A personal representative with the right of access
18 under section -4, the request must be accompanied by
19 a certified copy of the letter of appointment of the
20 representative or a small-estate affidavit or court
21 order;



- 1 (2) A conservator with the right of access under
2 section -5, the request must be accompanied by a
3 certified copy of the court order that gives the
4 conservator authority over the digital asset;
- 5 (3) An agent with the right of access under section -6,
6 the request must be accompanied by an original or a
7 copy of the power of attorney that authorizes the
8 agent to exercise authority over the digital asset and
9 a certification of the agent, under penalty of
10 perjury, that the power of attorney is in effect; and
- 11 (4) A trustee with the right of access under section -7,
12 the request must be accompanied by a certified copy of
13 the trust instrument that authorizes the trustee to
14 exercise authority over the digital asset.
- 15 (c) A custodian shall comply with a request made under
16 subsection (a) not later than sixty days after receipt. If the
17 custodian fails to comply, the fiduciary may apply to the court
18 for an order directing compliance.
- 19 (d) Instead of furnishing a copy of the trust instrument
20 under subsection (b)(4), the trustee may provide a certification
21 of trust. The certification:



- 1 (1) Must contain the following information:
- 2 (A) That the trust exists and the date the trust
- 3 instrument was executed;
- 4 (B) The identity of the settlor;
- 5 (C) The identity and address of the trustee;
- 6 (D) That there is nothing inconsistent in the trust
- 7 with respect to the trustee's powers over digital
- 8 assets;
- 9 (E) Whether the trust is revocable and the identity
- 10 of any person holding a power to revoke the
- 11 trust;
- 12 (F) Whether a cotrustee has authority to sign or
- 13 otherwise authenticate; and
- 14 (G) Whether all or fewer than all cotrustees are
- 15 required to exercise powers of the trustee;
- 16 (2) Must be signed or otherwise authenticated by a
- 17 trustee;
- 18 (3) Must state that the trust has not been revoked,
- 19 modified, or amended in a manner that would cause the
- 20 representations contained in the certification of
- 21 trust to be incorrect; and



1 (4) Need not contain the dispositive terms of the trust.

2 (e) A custodian that receives a certification under
3 subsection (d) may require the trustee to provide copies of
4 excerpts from the original trust instrument and later amendments
5 designating the trustee and conferring on the trustee the power
6 to act in the pending transaction.

7 (f) A custodian that acts in reliance on a certification
8 under subsection (d) without knowledge that the representations
9 contained in it are incorrect is not liable to any person for so
10 acting and may assume without inquiry the existence of facts
11 stated in the certification.

12 (g) A person that in good faith enters into a transaction
13 in reliance on a certification under subsection (d) may enforce
14 the transaction against the trust property as if the
15 representations contained in the certification were correct.

16 (h) A person that demands the trust instrument in addition
17 to a certification under subsection (d) or excerpts under
18 subsection (e) is liable for damages, including attorneys' fees,
19 if the court determines that the person did not act in good
20 faith in demanding the instrument.



1 (i) This section does not limit the right of a person to
2 obtain a copy of a trust instrument in a judicial proceeding
3 concerning the trust.

4 § -10 **Custodian immunity.** A custodian and its officers,
5 employees, and agents are immune from liability for an act or
6 omission done in good faith in compliance with this chapter.

7 § -11 **Relation to electronic signatures in global and**
8 **national commerce act.** This chapter modifies, limits, or
9 supersedes the Electronic Signatures in Global and National
10 Commerce Act, 15 U.S.C. section 7001 et seq., but does not
11 modify, limit, or supersede section 101(c) of that act,
12 15 U.S.C. section 7001(c), or authorize electronic delivery of
13 any of the notices described in section 103(b) of that act,
14 15 U.S.C. section 7003(b).

15 SECTION 2. This Act shall take effect on July 1, 2112.



Report Title:

Fiduciary; Digital Assets

Description:

Gives various types of fiduciaries access to the digital assets of the principal. (HB745 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

