

Senate Bill 301

By: Senator Kennedy of the 18th

A BILL TO BE ENTITLED
AN ACT

To amend Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and administration of estates, so as to enact the "Revised Uniform Fiduciary Access to Digital Assets Act"; to extend a fiduciary's powers to include managing tangible property and digital assets; to provide for exceptions; to provide for definitions; to amend Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, so as to provide conforming cross-references for a conservator; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and administration of estates, is amended by adding a new chapter to read as follows:

"CHAPTER 13

ARTICLE 1

53-13-1.

This chapter shall be known and may be cited as the 'Revised Uniform Fiduciary Access to Digital Assets Act.'

53-13-2.

As used in this chapter, the term:

(1) 'Account' means an arrangement under a terms-of-service agreement in which a custodian provides goods or services to the user.

(2) 'Agent' means an attorney in fact granted authority under a durable or nondurable power of attorney, including a person serving under a power of attorney created pursuant to Article 7 of Chapter 6 of Title 10. Such term shall not include a health care agent, as

defined in paragraph (6) of Code Section 31-32-2, nor a person serving under a conditional power of attorney, as defined in subsection (a) of Code Section 10-6-6, unless the conditional power of attorney has become effective at a specified time or on the occurrence of a specified event or contingency.

(3) 'Catalogue of electronic communications' means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(4) 'Conservator' means a person appointed by a court to manage the estate of a living individual appointed pursuant to Article 2 of Chapter 9 of this title. Such term shall include a guardian of the property appointed prior to July 1, 2005.

(5) 'Content of an electronic communication' means information concerning the substance or meaning of the communication which:

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

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

(C) Is not readily accessible to the public.

(6) 'Court' means the probate court.

(7) 'Custodian' means a person that engages in the transmission of, maintains, processes, receives, or stores a digital asset or electronic communication of another person.

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

(9) 'Digital asset' means an electronic record in which an individual has a right or interest. Such term shall not include an underlying asset or liability unless the asset or liability is itself an electronic record.

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

(11) 'Electronic communication' has the meaning set forth in 18 U.S.C. Section 2510(12), effective January 1, 2018.

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

(13) 'Fiduciary' means an original, additional, or successor personal representative, conservator, agent, or trustee.

(14) 'Information' includes data, text, images, videos, sounds, codes, computer programs, software, and databases.

(15) 'Online tool' means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian

and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(16) 'Person' means an individual, estate, business or nonprofit entity, corporation, business trust, trust, partnership, limited liability company, association, unincorporated organization, joint venture, commercial entity, joint-stock company, public corporation, government or governmental subdivision, agency, instrumentality, other legal or commercial entity.

(17) 'Personal representative' means an executor, administrator, county administrator, administrator with the will annexed, or special administrator.

(18) 'Power of attorney' means a writing or other record that grants a person authority to act in the place of an individual, including a conditional power of attorney, as defined in subsection (a) of Code Section 10-6-6, and a power of attorney created pursuant to Article 7 of Chapter 6 of Title 10.

(19) 'Principal' means an individual who grants authority to a person to act in the place of such individual in a power of attorney.

(20) 'Protected person' means an individual for whom a conservator has been appointed, including a minor, as defined in Code Section 29-1-1, and a ward, as defined in Code Section 29-1-1. Such term shall include an individual for whom a petition for the appointment of a conservator is pending, including both a proposed ward, as defined in Code Section 29-1-1, and a respondent, as defined in Code Section 29-11-2.

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

(22) 'Remote computing service' means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Section 2510(14), in effect on January 1, 2018.

(23) 'Terms-of-service agreement' means an agreement that controls the relationship between a user and a custodian.

(24) 'Trustee' means a person with legal title to property under a trust instrument, as defined in Code Section 53-12-2, that creates a beneficial interest in another. Such term shall include a successor trustee.

(25) 'User' means a person whose digital asset or electronic communication is carried, maintained, processed, received, or stored by a custodian or to which a custodian provides services.

(26) 'Will' means the legal declaration of an individual's testamentary intention regarding such individual's property or other matters. Such term shall include all codicils to such

legal declaration, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.

53-13-3.

(a) This chapter shall apply to a:

(1) Fiduciary acting under a will or power of attorney executed before, on, or after July 1, 2018;

(2) Personal representative acting for a decedent who died before, on, or after July 1, 2018;

(3) Conservatorship proceeding commenced before, on, or after July 1, 2018; and

(4) Trustee acting under a trust created before, on, or after July 1, 2018.

(b) This chapter shall apply to a custodian if the user resides in this state or resided in this state at the time of the user's death.

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

ARTICLE 2

53-13-10.

(a) A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose 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 shall override 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 Code 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 Code section shall override 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.

53-13-11.

(a) This chapter shall 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 shall 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 Code Section 53-13-10.

53-13-12.

(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 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 court for review in camera.

53-13-13.

If a deceased user consented or a 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 personal 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;

163 (3) A certified copy of the letters testamentary, letters of administration, or other letters
164 of appointment of the personal representative;

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

168 (5) If requested by the custodian:

169 (A) A number, username, address, or other unique subscriber or account identifier
170 assigned by the custodian to identify the user's account;

171 (B) Evidence linking the account to the user; or

172 (C) A finding by the court that:

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

175 (ii) Disclosure of the content of electronic communications of the user would not
176 violate 18 U.S.C. Section 2701, in effect on January 1, 2018; 47 U.S.C. Section 222,
177 in effect on January 1, 2018; or other applicable law;

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

180 (iv) Disclosure of the content of electronic communications of the user is reasonably
181 necessary for administration of the estate.

182 53-13-14.

183 Unless the user prohibited disclosure of digital assets or the court directs otherwise, a
184 custodian shall disclose to the personal representative of the estate of a deceased user a
185 catalogue of electronic communications sent or received by the user and digital assets,
186 other than the content of electronic communications, of the user, if the personal
187 representative gives the custodian:

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

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

190 (3) A certified copy of the letters testamentary, letters of administration, or other letters
191 of appointment of the personal representative; and

192 (4) If requested by the custodian:

193 (A) A number, username, address, or other unique subscriber or account identifier
194 assigned by the custodian to identify the user's account;

195 (B) Evidence linking the account to the user;

196 (C) An affidavit stating that disclosure of the user's digital assets is reasonably
197 necessary for administration of the estate; or

198 (D) A finding by the court that:

- 199 (i) The user had a specific account with the custodian, identifiable by the information
200 specified in subparagraph (A) of this paragraph; or
201 (ii) Disclosure of the user's digital assets is reasonably necessary for administration
202 of the estate.

203 53-13-15.

204 To the extent a power of attorney expressly grants an agent authority over the content of
205 electronic communications sent or received by the principal and unless directed otherwise
206 by the principal or the court, a custodian shall disclose to the agent the content if the agent
207 gives the custodian:

- 208 (1) A written request for disclosure in physical or electronic form;
209 (2) An original or copy of the power of attorney expressly granting the agent authority
210 over the content of electronic communications of the principal;
211 (3) A certification by the agent, under penalty of perjury, that the power of attorney is
212 in effect; and
213 (4) If requested by the custodian:
214 (A) A number, username, address, or other unique subscriber or account identifier
215 assigned by the custodian to identify the principal's account; or
216 (B) Evidence linking the account to the principal.

217 53-13-16.

218 Unless otherwise ordered by the court, directed by the principal, or provided by a power
219 of attorney, a custodian shall disclose to an agent with specific authority over digital assets
220 or general authority to act on behalf of a principal a catalogue of electronic
221 communications sent or received by the principal and digital assets, other than the content
222 of electronic communications, of the principal if the agent gives the custodian:

- 223 (1) A written request for disclosure in physical or electronic form;
224 (2) An original or a copy of the power of attorney that gives the agent specific authority
225 over digital assets or general authority to act on behalf of the principal;
226 (3) A certification by the agent, under penalty of perjury, that the power of attorney is
227 in effect; and
228 (4) If requested by the custodian:
229 (A) A number, username, address, or other unique subscriber or account identifier
230 assigned by the custodian to identify the principal's account; or
231 (B) Evidence linking the account to the principal.

53-13-17.

Unless otherwise ordered by the 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.

53-13-18.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the 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 Code Section 53-12-280 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.

53-13-19.

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

(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 Code Section 53-12-280;

(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:

266 (A) A number, username, address, or other unique subscriber or account identifier
267 assigned by the custodian to identify the trust's account; or
268 (B) Evidence linking the account to the trust.

269 53-13-20.

270 (a) After an opportunity for a hearing under paragraph (2) of subsection (b) of Code
271 Section 29-3-22 or paragraph (2) of subsection (b) of Code Section 29-5-23, the court may
272 grant a conservator access to the digital assets of a protected person.

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

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

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

280 (3) If requested by the custodian:

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

283 (B) Evidence linking the account to the protected person.

284 (c) A conservator with general authority to manage the assets of a protected person may
285 request that a custodian of the digital assets of the protected person suspend or terminate
286 an account of the protected person for good cause. A request made under this Code section
287 shall be accompanied by a certified copy of the court order giving the conservator authority
288 over the protected person's property.

289 ARTICLE 3

290 53-13-30.

291 (a) The legal duties imposed on a fiduciary charged with managing tangible property apply
292 to the management of digital assets, including the duty of care, loyalty, and confidentiality.

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

294 (1) Except as otherwise provided in Code Section 53-13-10, shall be subject to the
295 applicable terms of service;

296 (2) Shall be subject to other applicable law, including copyright law;

297 (3) In the case of a fiduciary, shall be limited by the scope of the fiduciary's duties; and

298 (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 has or 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 shall be an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of liability under applicable computer fraud and unauthorized computer access laws, including Article 6 of Chapter 9 of Title 16.

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

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

(2) Be an authorized user for the purpose of computer fraud and unauthorized computer access laws, including Article 6 of Chapter 9 of Title 16.

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

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

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

(2) A certified copy of the letters testamentary, letters of administration, or other letters of appointment of the personal representative, court order, power of attorney, or trust giving the fiduciary authority over the account; and

(3) 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

(C) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A) of this paragraph.

53-13-31.

(a) Not later than 60 days after receipt of the information required under Code Sections 53-13-13 through 53-13-30, 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 court for an order directing compliance.

(b) An order under subsection (a) of this Code section directing compliance shall contain a finding that compliance is not in violation of 18 U.S.C. Section 2702, in effect on July 1, 2018.

(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 shall 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 that:

(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.

ARTICLE 4

53-13-40.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but shall not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b)."

SECTION 2.

Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is amended by revising paragraph (1) of subsection (b) of Code Section 29-3-22, relating to the powers of a conservator and cooperation with the guardian of a minor, as follows:

"(b)(1) In the petition for appointment, or at any time during the conservatorship, the conservator may request the continuing power to:

(A) Invest the minor's property in investments other than those authorized in Code Section 29-3-32, pursuant to the provisions of Code Section 29-3-34, without further court approval of any investment;

367 (B) Sell, rent, lease, exchange, or otherwise dispose of any or all of the minor's real or
368 personal property without complying with the provisions of Code Section 29-3-35,
369 other than the provisions for additional bond set forth in subsection (e) of Code Section
370 29-3-35; ~~or~~
371 (C) Continue the operation of any farm or business in which the minor has an interest;
372 ~~or~~
373 (D) Access the digital assets of the minor, pursuant to Code Section 53-13-20."

374 **SECTION 3.**

375 Said title is further amended by revising paragraph (1) of subsection (b) of Code Section
376 29-5-23, relating to the authority of a conservator of an adult and cooperation with a guardian
377 or other interested parties, as follows:

378 "(b)(1) In the petition for appointment, or at any time during the conservatorship, the
379 conservator may request the continuing power:

380 (A) To invest the ward's property in investments other than those authorized in Code
381 Section 29-5-32, pursuant to the provisions of Code Section 29-5-34, without further
382 court approval of any investment;

383 (B) To sell, rent, lease, exchange, or otherwise dispose of any or all of the ward's real
384 or personal property without complying with the provisions of Code Section 29-5-35
385 other than the provisions for additional bond set forth in subsection (e) of Code Section
386 29-5-35; ~~or~~

387 (C) To continue the operation of any farm or business in which the ward has an
388 interest; ~~or~~

389 (D) To access the digital assets of the ward, pursuant to Code Section 53-13-20."

390 **SECTION 4.**

391 This Act shall become effective on July 1, 2018.

392 **SECTION 5.**

393 All laws and parts of laws in conflict with this Act are repealed.