



## SENATE OF PENNSYLVANIA BILL SUMMARY

### Senate Bill 518 Printer's No. 483

Prime Sponsor: Senator Pileggi  
Committee: Judiciary

---

#### SYNOPSIS:

This bill amends Title 20 (Decedents, Estates and Fiduciaries), adding a new Chapter 39 to provide for access by personal representatives, agents, and other fiduciaries to digital assets of a decedent.

#### SUMMARY:

Subject to the federal Electronic Communications Act, this bill allows a variety of representatives to access a person's digitally stored information, images, and communications as follows:

- Personal representatives (e.g., an executor or administrator) may access the content of communications, a catalog of senders and recipients of communications, and other digital assets unless a court order or a will states otherwise.
- Conservators (i.e., a person appointed by a court to manage the estate of a living person) may access the content of communications, a catalog of senders and recipients of communications, and other digital assets if a court allows such access.
- Agents (i.e., a person granted authority in a power-of-attorney) may access the content of communications, a catalog of senders and recipients of communications, and other digital assets to the extent allowed by the power-of-attorney.
- Trustees (i.e., a fiduciary with legal title to an asset under an agreement that establishes a beneficial interest in others) may access digital assets held in trust unless a court provides otherwise.
- The bill states that, subject to the terms of service and any applicable copyright law, any of these fiduciaries stands in the place of the account holder with regard to authorizing the custodian to divulge digital assets and electronic communications.

The bill sets forth the manner in which a fiduciary must make a request to a custodian of digital assets or electronic communications. Requests must be accompanied, depending on the type of fiduciary, with a certified copy of a court order or power of attorney or trust instrument.

## Amendment A03387

This amendment guts and replaces the bill. The amendment changes existing provisions in the bill and adds provisions that are not currently found in the bill.

*Definitions.* In the amendment, there are changes to key definitions:

- The “applicability” provision in Section 3911 of the bill is moved to Section 3903 and makes clear that the legislation only applies to fiduciary relationships created on or after the effective date of the legislation.
- The definition of “content of an electronic communication” is expanded to clarify that it is not only information about an electronic communication that is not readily accessible by the public, but it is also sent or received by a user and stored by an electronic communication service.
- The amendment uses the term “user” (*i.e.*, a person who has an account with the custodian) instead of “account holder,” which is used in the bill.
- The definition of “digital asset” clarifies that the user must have an interest in the electronic record.

*User Directions.* The amendment introduces provisions enabling the user to direct how digital assets may be disclosed. A user may direct the custodian via an online tool to disclose or not disclose digital assets and communications. As long as the online tool allows the user to modify those instructions, the online tool overrides any contrary instructions in a will, trust, power of attorney, or other record. A user’s instructions with an online tool or with a will, trust, power of attorney, or other record overrides a contrary provision in the terms of service.

*Terms of Service.* This legislation does not change the rights of the custodian or the user under the terms of service with regard to accessing and using digital assets. The legislation does not expand the rights of a fiduciary beyond the rights of the user.

*Procedure for Disclosure of Digital Assets.* The amendment introduces the procedure for custodians to follow. Custodians have the discretion to grant fiduciaries full access or partial access that is sufficient for the fiduciary to perform its obligations. The custodian may assess a reasonable administrative charge. The custodian need not disclose digital assets that were deleted by the user. If the user directs that some but not all of the digital assets be disclosed, then the custodian may refuse to disclose any of the digital assets if segregating the disallowed portion would cause an undue burden on the custodian. A court order may be sought with regard to the issue of segregation and the resulting burden.

The remainder of the amendment contains approximately the same substance as the bill, except the sections relate to the type of user whose digital assets are involved instead of the type of fiduciary that must assume responsibility for the digital assets.

Effective Date: This bill is effective in 60 days.

**BILL HISTORY:**

There is no bill history during this legislative session.

Prepared by: Cawley 10/26/2015