

Senate Bill 301

By: Senator Kennedy of the 18th

A BILL TO BE ENTITLED
AN ACT

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

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

12 "CHAPTER 13

13 ARTICLE 1

14 53-13-1.

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

17 53-13-2.

18 As used in this chapter, the term:

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

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

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

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

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

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

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

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

40 (C) Is not readily accessible to the public.

41 (6) 'Court' means the probate court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

83 (22) 'Remote computing service' means a custodian that provides to a user
84 computer-processing services or the storage of digital assets by means of an electronic
85 communications system, as defined in 18 U.S.C. Section 2510(14), in effect on January 1,
86 2018.

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

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

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

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

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

99 53-13-3.

100 (a) This chapter shall apply to a:

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

103 (2) Personal representative acting for a decedent who died before, on, or after July 1,
104 2018;

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

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

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

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

111 ARTICLE 2

112 53-13-10.

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

118 (b) If a user has not used an online tool to give direction under subsection (a) of this Code
119 section or if the custodian has not provided an online tool, the user may allow or prohibit
120 in a will, trust, power of attorney, or other record disclosure to a fiduciary of some or all
121 of the user's digital assets, including the content of electronic communications sent or
122 received by the user.

123 (c) A user's direction under subsection (a) or (b) of this Code section shall override a
124 contrary provision in a terms-of-service agreement that does not require the user to act
125 affirmatively and distinctly from the user's assent to the terms of service.

126 53-13-11.

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

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

132 (c) A fiduciary's or designated recipient's access to digital assets may be modified or
 133 eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not
 134 provided direction under Code Section 53-13-10.

135 53-13-12.

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

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

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

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

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

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

147 (d) If a user directs or a fiduciary requests a custodian to disclose under this chapter some,
 148 but not all, of the user's digital assets, the custodian need not disclose the assets if
 149 segregation of the assets would impose an undue burden on the custodian. If the custodian
 150 believes the direction or request imposes an undue burden, the custodian or fiduciary may
 151 seek an order from the court to disclose:

152 (1) A subset limited by date of the user's digital assets;

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

154 (3) None of the user's digital assets; or

155 (4) All of the user's digital assets to the court for review in camera.

156 53-13-13.

157 If a deceased user consented or a court directs disclosure of the contents of electronic
 158 communications of the user, the custodian shall disclose to the personal representative of
 159 the estate of the user the content of an electronic communication sent or received by the
 160 user if the personal representative gives the custodian:

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

162 (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.

232 53-13-17.

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

237 53-13-18.

238 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a
239 custodian shall disclose to a trustee that is not an original user of an account the content of
240 an electronic communication sent or received by an original or successor user and carried,
241 maintained, processed, received, or stored by the custodian in the account of the trust if the
242 trustee gives the custodian:

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

244 (2) A certified copy of the trust instrument or a certification of the trust under Code
245 Section 53-12-280 that includes consent to disclosure of the content of electronic
246 communications to the trustee;

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

249 (4) If requested by the custodian:

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

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

253 53-13-19.

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

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

261 (2) A certified copy of the trust instrument or a certification of the trust under Code
262 Section 53-12-280;

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

265 (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.

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

303 (d) A fiduciary acting within the scope of the fiduciary's duties shall be an authorized user
304 of the property of the decedent, protected person, principal, or settlor for the purpose of
305 liability under applicable computer fraud and unauthorized computer access laws, including
306 Article 6 of Chapter 9 of Title 16.

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

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

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

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

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

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

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

322 (3) If requested by the custodian:

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

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

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

328 53-13-31.

329 (a) Not later than 60 days after receipt of the information required under Code
330 Sections 53-13-13 through 53-13-30, a custodian shall comply with a request under this
331 chapter from a fiduciary or designated recipient to disclose digital assets or terminate an
332 account. If the custodian fails to comply, the fiduciary or designated recipient may apply
333 to the court for an order directing compliance.

334 (b) An order under subsection (a) of this Code section directing compliance shall contain
 335 a finding that compliance is not in violation of 18 U.S.C. Section 2702, in effect on July 1,
 336 2018.

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

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

342 (e) This chapter shall not limit a custodian's ability to obtain or require a fiduciary or
 343 designated recipient requesting disclosure or termination under this chapter to obtain a
 344 court order that:

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

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

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

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

351 ARTICLE 4

352 53-13-40.

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

358 **SECTION 2.**

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

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

364 (A) Invest the minor's property in investments other than those authorized in Code
 365 Section 29-3-32, pursuant to the provisions of Code Section 29-3-34, without further
 366 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.