



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5034 (Substitute S-1 as reported by the Committee of the Whole)
Sponsor: Representative Anthony G. Forlini
House Committee: Communications and Technology
Senate Committee: Judiciary

CONTENT

The bill would create the "Fiduciary Access to Digital Assets Act" to provide for disclosure of digital assets to a fiduciary or designated recipient. The bill would do the following:

- Allow a user to use an online tool to direct a digital custodian to disclose or not to disclose to a designated recipient some or all of the user's digital assets, including the contents of electronic communications.
- Allow a user who had not used an online tool for that purpose to allow or prohibit disclosure of digital assets to a fiduciary in a will, trust, power of attorney, or other record.
- Specify requirements for a digital custodian's disclosure of digital assets.
- Prescribe procedures for disclosure of a user's digital assets to a personal representative of the user's estate, an agent with power of attorney, a trustee, or a conservator.
- Specify duties of a fiduciary or designated recipient with regard to managing a user's digital assets.
- Specify a digital custodian's responsibilities in complying with the proposed Act.
- Authorize an interested person to file a petition to limit, eliminate, or modify a personal representative's powers with respect to a decedent's digital assets.

"User" would mean a person that has an account with a digital custodian. "Digital custodian" would mean a person that carries, maintains, processes, receives, or stores a user's digital asset. "Digital asset" would mean an electronic record in which a user has a right or interest.

"Fiduciary" would mean a person who is an original, additional, or successor personal representative, conservator, agent, or trustee. "Agent" would mean an attorney-in-fact granted authority under a durable or nondurable power of attorney.

The bill would take effect 90 days after its enactment.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill could have a negative, though likely small, fiscal impact on the State and local governments. The provisions of the bill could lead to an increase in hearings regarding electronic assets. If court fees were not enough to cover the additional cost, an increase in hearings could incrementally increase resource demands on court systems.

Date Completed: 3-16-16

Fiscal Analyst: Ryan Bergan

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