

HCS HB 379 -- MISSOURI FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

SPONSOR: Plocher

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on General Laws by a vote of 12 to 0. Vote "Do Pass with HCS" by the Standing Committee on Rules-Legislative Oversight by a vote of 11 to 0.

This bill establishes the Missouri Fiduciary Access to Digital Assets Act, which allows fiduciaries to access electronic records or "digital assets" of an account holder or "user." A user may allow or prohibit the disclosure of his or her digital assets to a fiduciary in a will, trust, or other record. The user may also use an online tool to direct the custodian of the digital assets to disclose some or all of the digital assets. In certain situations, the direction of the user to the custodian using the online tool can override a conflicting direction contained in the user's will, trust, or other record. Also, the user's direction regarding disclosure of the digital assets under an online tool or other record overrides a contrary provision in a terms-of-service agreement that does not require the user to take affirmative action regarding the agreement. A fiduciary's access to digital assets may be modified or eliminated by a user, federal law, or a terms-of-service agreement if the user has not provided direction through the use of an online tool or will, trust, or other record.

A custodian has the discretion to grant a fiduciary full access to the user's account, partial access, or provide a copy of the digital assets requested but is prohibited from disclosing a digital asset the user has deleted. A custodian may charge a fee for disclosure. A custodian must disclose to a fiduciary the content of an electronic communication sent or received by the user, a catalogue of electronic communications, and digital assets of the user if the fiduciary provides certain documentation as specified in the bill. If the fiduciary is an agent acting under a power of attorney, then the power of attorney must expressly grant the agent authority over the content of electronic communications sent or received by the user for the custodian to disclose the digital assets.

A custodian may disclose to a conservator the user's catalogue of electronic communications and any digital assets if the conservator is given authority by the court and provides the court order to the custodian. Additionally, a conservator may request the suspension or termination of a user's account for good cause.

A fiduciary may terminate the user's account in writing and such request must be accompanied with certain documents as provided in

the bill. Finally, a custodian has 60 days to comply with a fiduciary's request for disclosure or account termination. If the custodian does not comply with the request, then the fiduciary may apply to the court to order compliance.

This bill is similar to SB 129 (2017).

PROPONENTS: Supporters say that it has become common for people to store photos and documents electronically rather than keep physical copies. When those photos, documents, or electronic communications are stored through an account such as google or yahoo it isn't always clear who has access to that information. This would allow someone to specify through a will or trust who can control or access an account.

Testifying for the bill were Representative Plocher; Motion Picture Association of America; and Michael Magliari, Board of Governors of The Missouri Bar.

OPPONENTS: There was no opposition voiced to the committee.