

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 909

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time January 16, 2018, and ordered printed.

Read 2nd time January 25, 2018, and referred to the Committee on the Judiciary and Civil and Criminal Jurisprudence.

Reported from the Committee February 15, 2018, with recommendation that the bill do pass and be placed on the Consent Calendar.

Removed from the Consent Calendar February 20, 2018.

Re-reported from the Committee February 21, 2018, with recommendation that the bill do pass.

Taken up for Perfection March 1, 2018. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

4456S.01P

AN ACT

To amend chapter 472, RSMo, by adding thereto nineteen new sections relating to fiduciary access to digital assets.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 472, RSMo, is amended by adding thereto nineteen
2 new sections, to be known as sections 472.400, 472.405, 472.410, 472.415,
3 472.420, 472.425, 472.430, 472.435, 472.440, 472.445, 472.450, 472.455, 472.460,
4 472.465, 472.470, 472.475, 472.480, 472.485, and 472.490, to read as follows:

472.400. Sections 472.400 to 472.490 shall be known and may be
2 cited as the "Missouri Fiduciary Access to Digital Assets Act".

472.405. As used in sections 472.400 to 472.490, the following
2 terms mean:

3 (1) "Access", includes view, marshal, manage, copy, distribute, or
4 delete;

5 (2) "Account", an arrangement under a terms-of-service
6 agreement in which a custodian carries, maintains, processes, receives,
7 or stores a digital asset of the user or provides goods or services to the
8 user;

9 (3) "Agent", an attorney-in-fact granted authority under a durable
10 or nondurable power of attorney;

11 (4) "Carries", engages in the transmission of electronic
12 communications;

13 (5) "Catalogue of electronic communications", information that
14 identifies each person with which a user has had an electronic
15 communication, the time and date of the communication, and the
16 electronic address of the person;

17 (6) "Conservator", a person appointed by a court to have the care
18 and custody of the estate of a minor or a disabled person. A "limited
19 conservator" is one whose duties or powers are limited. The term
20 "conservator", as used in sections 472.400 to 472.490, includes limited
21 conservator unless otherwise specified or apparent from the context;

22 (7) "Content of an electronic communication", information
23 concerning the substance or meaning of the communication which:

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

25 (b) Is in electronic storage by a custodian providing an
26 electronic-communication service to the public or is carried or
27 maintained by a custodian providing a remote-computing service to the
28 public; and

29 (c) Is not readily accessible to the public;

30 (8) "Court", any court with competent jurisdiction within this
31 state;

32 (9) "Custodian", a person that carries, maintains, processes,
33 receives, or stores a digital asset of a user;

34 (10) "Designated recipient", a person chosen by a user using an
35 online tool to administer digital assets of the user;

36 (11) "Digital asset", an electronic record in which an individual
37 has a right or interest. The term does not include an underlying asset
38 or liability unless the asset or liability is itself an electronic record;

39 (12) "Electronic", relating to technology having electrical, digital,
40 magnetic, wireless, optical, electromagnetic, or similar capabilities;

41 (13) "Electronic communication", has the same meaning as set
42 forth in 18 U.S.C. Section 2510(12), as amended;

43 (14) "Electronic communication service", a custodian that
44 provides to a user the ability to send or receive an electronic
45 communication;

46 (15) "Fiduciary", an original, additional, or successor personal
47 representative, conservator, agency, or trustee;

48 (16) "Information", data, text, images, videos, sounds, codes,
49 computer programs, software, databases, or the like;

50 (17) "Online tool", an electronic service provided by a custodian
51 that allows the user, in an agreement distinct from the terms-of-service
52 agreement between the custodian and user, to provide directions for
53 disclosure or nondisclosure of digital assets to a third person;

54 (18) "Person", an individual, estate, trust, business or nonprofit
55 entity, public corporation, government or governmental subdivision,
56 agency, instrumentality, or other legal entity;

57 (19) "Personal representative", executor or administrator,
58 including an administrator with the will annexed, an administrator de
59 bonis non, an administrator pending contest, an administrator during
60 minority or absence, and any other type of administrator of the estate
61 of a decedent whose appointment is permitted, or any person who
62 performs substantially the same function under the law of Missouri,
63 including without limitation an affiant who has filed a small estate
64 affidavit under section 473.097. It does not include an executor de son
65 tort;

66 (20) "Power of attorney", a record that grants an agent authority
67 to act in the place of a principal;

68 (21) "Principal", an individual who grants authority to an agent
69 in a power of attorney;

70 (22) "Protected person", an individual for whom a conservator
71 has been appointed, including a protectee, a disabled person, and an
72 individual for whom an application for the appointment of a
73 conservator is pending;

74 (23) "Record", information that is inscribed on a tangible medium
75 or that is stored in an electronic or other medium and is retrievable in
76 perceivable form;

77 (24) "Remote computing service", a custodian that provides to a
78 user computer processing services or the storage of digital assets by
79 means of an electronic communications system, as defined in 18 U.S.C.
80 Section 2510(14), as amended;

81 (25) "Terms-of-service agreement", an agreement that controls the
82 relationship between a user and a custodian;

83 (26) "Trustee", a fiduciary with legal title to property pursuant
84 to an agreement or declaration that creates a beneficial interest in
85 another, including an original, additional, and successor trustee, and
86 a co-trustee;

87 (27) "User", a person that has an account with a custodian;

88 (28) "Will", includes a testamentary instrument, a codicil, a
89 testamentary instrument that only appoints an executor, and
90 instrument that revokes or revises a testamentary instrument.

472.410. 1. Sections 472.400 to 472.490 shall apply to:

2 (1) A fiduciary or agent acting under a will or power of attorney
3 executed before, on, or after the effective date of sections 472.400 to
4 472.490;

5 (2) A personal representative acting for a decedent who dies
6 before, on, or after the effective date of sections 472.400 to 472.490;

7 (3) A conservatorship proceeding commenced before, on, or after
8 the effective date of sections 472.400 to 472.490; and

9 (4) A trustee acting under a trust created before, on, or after the
10 effective date of sections 472.400 to 472.490.

11 2. Sections 472.400 to 472.490 shall apply to a custodian if the
12 user resides in this state or resided in this state at the time of the
13 user's death.

14 3. Sections 472.400 to 472.490 shall not apply to a digital asset of
15 an employer used by an employee in the ordinary course of the
16 employer's business.

472.415. 1. A user may use an online tool to direct the custodian
2 to disclose to a designated recipient or not to disclose some or all of the
3 user's digital assets, including the content of electronic
4 communications. If the online tool allows the user to modify or delete
5 a direction at all times, a direction regarding disclosure using an
6 online tool overrides a contrary direction by the user in a will, trust,
7 power of attorney, or other record.

8 2. If a user has not used an online tool to give direction under
9 subsection 1 of this section or if the custodian has not provided an
10 online tool, the user may allow or prohibit in a will, trust, power of
11 attorney, or other record, disclosure to a fiduciary of some or all of the
12 user's digital assets, including the content of electronic
13 communications sent or received by the user.

14 3. A user's direction under subsection 1 or 2 of this section
15 overrides a contrary provision in a terms-of-service agreement that
16 does not require the user to act affirmatively and distinctly from the
17 user's assent to the terms-of-service.

472.420. 1. Sections 472.400 to 472.490 shall not change or impair
2 a right of a custodian or a user under a terms-of-service agreement to
3 access and use digital assets of the user.

4 2. Sections 472.400 to 472.490 shall not give a fiduciary or a
5 designated recipient any new or expanded rights other than those held
6 by the user for whom, or for whose estate, the fiduciary or designated
7 recipient acts or represents.

8 3. A fiduciary's or a designated recipient's access to digital assets
9 may be modified or eliminated by a user, by federal law, or by a terms-
10 of-service agreement if the user has not provided direction under
11 section 472.415.

472.425. 1. When disclosing digital assets of a user under
2 sections 472.400 to 472.490 the custodian may at its sole discretion:

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

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

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

12 2. A custodian may assess a reasonable administrative charge for
13 the cost of disclosing digital assets under sections 472.400 to 472.490.

14 3. A custodian shall not disclose under sections 472.400 to 472.490
15 a digital asset deleted by a user.

16 4. If a user directs or a fiduciary requests a custodian to disclose
17 under sections 472.400 to 472.490 some, but not all, of the user's digital
18 assets, the custodian need not disclose the assets if segregation of the
19 assets would impose an undue burden on the custodian. If the
20 custodian believes the direction or request imposes an undue burden,
21 the custodian or fiduciary may seek an order from the court to disclose:

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

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

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

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

27 camera.

472.430. If a deceased user consented or a court directs
2 disclosure of the contents of electronic communications of the user, the
3 custodian shall disclose to the personal representative of the estate of
4 the user the content of an electronic communication sent or received
5 by the user if the representative gives the custodian:

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

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

9 (3) A certified copy of the letters testamentary or letters of
10 administration of the representative or a certified copy of the
11 certificate of clerk in connection with a small estate affidavit or court
12 order;

13 (4) Unless the user provided direction using an online tool, then
14 in the case of user consent to disclosure, a copy of the user's will, trust,
15 power of attorney, or other record evidencing the user's consent to
16 disclosure of the content of electronic communications; and

17 (5) If requested by the custodian for the purpose of identifying
18 the correct account of the user:

19 (a) A number, username, address, or other unique subscriber or
20 account identifier assigned by the custodian to identify the user's
21 account;

22 (b) Evidence linking the account to the user; or

23 (c) A finding by the court that:

24 a. The user had a specific account with the custodian,
25 identifiable by the information specified in paragraph (a) of this
26 subdivision;

27 b. Disclosure of the content of electronic communications of the
28 user would not violate 18 U.S.C. Section 2701 et seq., as amended, 47
29 U.S.C. Section 222, as amended, or other applicable law;

30 c. Unless the user provided direction using an online tool, the
31 user consented to disclosure of the content of electronic
32 communications; or

33 d. Disclosure of the content of electronic communications of the
34 user is reasonably necessary for administration of the estate.

472.435. Unless the user prohibited disclosure of digital assets or
2 the court directs otherwise, a custodian shall disclose to the personal

3 representative of the estate of a deceased user a catalogue of electronic
4 communications sent or received by the user and digital assets, other
5 than the content of electronic communications, of the user, if the
6 representative gives the custodian:

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

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

10 (3) A certified copy of the letters testamentary or letters of
11 administration of the representative or a certified copy of certificate
12 of clerk in connection with a small-estate affidavit or court order; and

13 (4) If requested by the custodian for the purpose of identifying
14 the correct account of the correct user:

15 (a) A number, username, address, or other unique subscriber or
16 account identifier assigned by the custodian to identify the user's
17 account;

18 (b) Evidence linking the account to the user;

19 (c) An affidavit stating that disclosure of the user's digital assets
20 is reasonably necessary for administration of the estate; or

21 (d) A finding by the court that:

22 a. The user had a specific account with the custodian,
23 identifiable by the information specified in paragraph (a) of this
24 subdivision; or

25 b. Disclosure of the user's digital assets is reasonably necessary
26 for administration of the estate.

472.440. To the extent a power of attorney expressly grants an
2 agent authority over the content of an electronic communications sent
3 or received by the principal and unless directed otherwise by the
4 principal or the court, a custodian shall disclose to the agent the
5 content if the agent gives the custodian:

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

8 (2) An original or copy of the power of attorney expressly
9 granting the agent authority over the content of electronic
10 communications of the principal;

11 (3) A certification by the agent, under penalty of perjury, that
12 the power of attorney is in effect; and

13 (4) If requested by the custodian for the purpose of identifying

14 the correct account of the correct user:

15 (a) A number, username, address, or other unique subscriber or
16 account identifier assigned by the custodian to identify the principal's
17 account; or

18 (b) Evidence linking the account to the principal.

472.445. Unless otherwise ordered by the court, directed by the
2 principal, or provided by a power of attorney, a custodian shall disclose
3 to an agent with specific authority over digital assets or general
4 authority to act on behalf of a principal a catalogue of electronic
5 communications sent or received by the principal and digital assets,
6 other than the content of electronic communications, of the principal
7 if the agent gives the custodian:

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

10 (2) An original or a copy of the power of attorney that gives the
11 agent specific authority over digital assets or general authority to act
12 on behalf of the principal;

13 (3) A certification by the agent, under penalty of perjury, that
14 the power of attorney is in effect; and

15 (4) If requested by the custodian for the purpose of identifying
16 the correct account of the correct user:

17 (a) A number, username, address, or other unique subscriber or
18 account identifier assigned by the custodian to identify the principal's
19 account; or

20 (b) Evidence linking the account to the principal.

472.450. Unless otherwise ordered by the court or provided in a
2 trust, a custodian shall disclose to a trustee that is an original user of
3 an account any digital asset of the account held in trust, including a
4 catalogue of electronic communications of the trustee and the content
5 of the electronic communications.

472.455. Unless otherwise ordered by the court, directed by the
2 user, or provided in a trust, a custodian shall disclose to a trustee that
3 is not an original user of an account the content of an electronic
4 communication sent or received by an original or successor user and
5 carried, maintained, processed, received, or stored by the custodian in
6 the account of the trust if the trustee gives the custodian:

7 (1) A written request for disclosure in physical or electronic

8 form;

9 (2) A certified copy of the trust instrument or a certification of
10 the trust under section 456.10-1013 that includes consent to disclosure
11 of the content of electronic communications to the trustee;

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

15 (4) If requested by the custodian for the purpose of identifying
16 the correct account of the correct user:

17 (a) A number, username, address, or other unique subscriber or
18 account identifier assigned by the custodian to identify the trust's
19 account; or

20 (b) Evidence linking the account to the trust.

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

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

11 (2) A certified copy of the trust instrument or a certification of
12 the trust under section 456.10-1013;

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

16 (4) If requested by the custodian for the purpose of identifying
17 the correct account of the correct user:

18 (a) A number, username, address, or other unique subscriber or
19 account identifier assigned by the custodian to identify the trust's
20 account; or

21 (b) Evidence linking the account to the trust.

472.465. 1. After an opportunity for a hearing under Missouri
2 conservatorship law, the court may grant a conservator access to the
3 digital assets of a protected person.

4 **2. Unless otherwise ordered by the court or directed by the user,**
5 **a custodian shall disclose to a conservator the catalogue of electronic**
6 **communications sent or received by a protected person and any digital**
7 **assets, other than the content of electronic communications, in which**
8 **the protected person has a right or interest if the conservator gives the**
9 **custodian:**

10 **(1) A written request for disclosure in physical or electronic**
11 **form;**

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

14 **(3) If requested by the custodian for the purpose of identifying**
15 **the correct account of the correct user:**

16 **(a) A number, username, address, or other unique subscriber or**
17 **account identifier assigned by the custodian to identify the account of**
18 **the protected person; or**

19 **(b) Evidence linking the account to the protected person.**

20 **3. A conservator with general authority to manage the assets of**
21 **a protected person may request a custodian of the digital assets of the**
22 **protected person to suspend or terminate an account of the protected**
23 **person for good cause. A request made under this subsection shall be**
24 **accompanied by a certified copy of the court order giving the**
25 **conservator authority over the protected person's property.**

472.470. 1. The legal duties imposed on a fiduciary charged with
2 **managing tangible property apply to the management of digital assets,**
3 **including:**

4 **(1) The duty of care;**

5 **(2) The duty of loyalty; and**

6 **(3) The duty of confidentiality.**

7 **2. A fiduciary's or designated recipient's authority with respect**
8 **to a digital asset of a user:**

9 **(1) Except as otherwise provided in section 472.415, is subject to**
10 **the applicable terms-of-service agreement;**

11 **(2) Is subject to other applicable law, including copyright law;**

12 **(3) In the case of a fiduciary, is limited by the scope of the**
13 **fiduciary's duties; and**

14 **(4) May not be used to impersonate the user.**

15 **3. A fiduciary with authority over the property of a decedent,**

16 protected person, principal, or settlor has the right to access any
17 digital asset in which the decedent, protected person, principal, or
18 settlor had a right or interest and that is not held by a custodian or
19 subject to a terms-of-service agreement.

20 4. A fiduciary acting within the scope of the fiduciary's duties is
21 an authorized user of the property of the decedent, protected person,
22 principal, or settlor for the purpose of applicable computer-fraud and
23 unauthorized-computer-access laws, including Missouri law on
24 unauthorized computer access.

25 5. A fiduciary with authority over the tangible, personal property
26 of a decedent, protected person, principal, or settlor:

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

29 (2) Is an authorized user for the purpose of computer-fraud and
30 unauthorized-computer-access laws, including Missouri law on
31 unauthorized computer access.

32 6. A custodian may disclose information in an account to a
33 fiduciary of the user when the information is required to terminate an
34 account used to access digital assets licensed to the user.

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

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

40 (2) A certified copy of the letter of testamentary or letters of
41 administration of the representative or a certified copy of the
42 certificate of clerk in connection with a small-estate affidavit or court
43 order, power of attorney, or trust giving the fiduciary authority over
44 the account; and

45 (3) If requested by the custodian for the purpose of identifying
46 the correct account of the correct user:

47 (a) A number, username, address, or other unique subscriber or
48 account identifier assigned by the custodian to identify the user's
49 account;

50 (b) Evidence linking the account to the user; or

51 (c) A finding by the court that the user had a specific account
52 with the custodian, identifiable by the information specified in

53 paragraph (a) of this subdivision.

472.475. 1. Not later than sixty days after receipt of the
2 information required under sections 472.430 to 472.470, a custodian
3 shall comply with a request under sections 472.400 to 472.490 from a
4 fiduciary or designated recipient to disclose digital assets or terminate
5 an account. If the custodian fails to comply, the fiduciary or designated
6 recipient may apply to the court for an order directing compliance.

7 2. An order under subsection 1 of this section directing
8 compliance shall contain a finding that compliance is not in violation
9 of 18 U.S.C. Section 2702, as amended.

10 3. A custodian may notify the user that a request for disclosure
11 or to terminate an account was made under sections 472.400 to 472.490.

12 4. A custodian may deny a request under sections 472.400 to
13 472.490 from a fiduciary or designated recipient for disclosure of digital
14 assets or to terminate an account if the custodian is aware of any
15 lawful access to the account following the receipt of the fiduciary's
16 request.

17 5. Sections 472.400 to 472.490 do not limit a custodian's ability to
18 obtain or require a fiduciary or designated recipient requesting
19 disclosure or termination under such sections to obtain a court order
20 which:

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

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

25 (3) Contains a finding required by law other than as provided
26 under sections 472.400 to 472.490.

27 6. A custodian and its officers, employees, and agents are
28 immune from liability for an act or omission done in good faith in
29 compliance with sections 472.400 to 472.490.

472.480. In applying and construing sections 472.400 to 472.490,
2 consideration may be given to the need to promote uniformity of the
3 law with respect to its subject matter among states that enact similar
4 provisions.

472.485. Sections 472.400 to 472.490 modify, limit, or supersede
2 the Electronic Signatures in Global and National Commerce Act, 15
3 U.S.C. Section 7001 et seq., but do not modify, limit, or supersede

4 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
5 electronic delivery of any of the notices described in Section 103(b) of
6 that act, 15 U.S.C. Section 7003(b).

472.490. If any provision of sections 472.400 to 472.490 or the
2 application of such sections to any person or circumstance is held
3 invalid, the invalidity does not affect other provisions or application of
4 sections 472.400 to 472.490 which can be given effect without the invalid
5 provision or application, and to this end the provisions of sections
6 472.400 to 472.490 are severable.

Unofficial ✓

Bill

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