

*Colorado Legislative Council Staff Fiscal Note*

**STATE  
FISCAL IMPACT**

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<b>Drafting Number:</b> LLS 15-0667	<b>Date:</b> February 17, 2015
<b>Prime Sponsor(s):</b> Rep. Keyser	<b>Bill Status:</b> House Judiciary
Sen. Steadman	<b>Fiscal Analyst:</b> Clare Pramuk (303-866-2677)

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**BILL TOPIC:** UNIFORM ACT FIDUCIARY ACCESS TO DIGITAL ACCESS

<b>Fiscal Impact Summary*</b>	<b>FY 2015-2016</b>	<b>FY 2016-2017</b>
<b>State Revenue</b>		
<b>State Expenditures</b>	Minimal workload increase. See State Expenditures section.	
<b>FTE Position Change</b>		
<b>Appropriation Required:</b> None.		

\* This summary shows changes from current law under the bill for each fiscal year.

**Summary of Legislation**

This bill, **recommended by the Colorado Commission on Uniform State Laws**, enacts the "Uniform Fiduciary Access to Digital Assets Act" which sets forth the conditions under which certain fiduciaries may access an electronic record of a principal or decedent. A personal representative, conservator, agent or trustee may access:

- the content of an electronic communication that the custodian is permitted to disclose under federal electronic communications privacy law;
- any catalog of electronic communications sent or received by the decedent; and
- any other digital asset in which the decedent had a right or interest at death.

A fiduciary that is an account holder or that has a right under the bill to access a digital asset of an account holder:

- may take action concerning the asset to the extent of the account holder's authority and the fiduciary's power under Colorado law, except in certain situations;
- has the lawful consent of the account holder for the custodian to divulge the content of an electronic communication to the fiduciary; and
- is an authorized user for purposes of computer fraud and unauthorized computer access laws.

The bill specifies how to request access to a digital asset from a custodian and specifies that a custodian and its officers, employees and agents are not liable for an act or omission done in good-faith compliance with the provisions of the bill.

## **Background**

The Colorado Commission on Uniform State Laws is charged with working with the national Uniform Law Commission (ULC) to promote uniformity in state laws where uniformity may be deemed desirable and practicable. This is achieved by developing proposed uniform legislation through the ULC that can be adopted by the various state legislatures. Colorado's commissioners are required to be attorneys admitted to practice law in Colorado. Members include six attorneys appointed or reappointed by joint resolution of the General Assembly; any Colorado citizen who is elected as a life member of the ULC (after twenty years of membership); and the Director of the Office of Legislative Legal Services, or the Director's designee. The Office of Legislative Legal Services provides assistance to the legislative members of the Colorado Commission in their efforts to enact legislation regarding uniform acts.

## **State Expenditures**

This bill may result in a minimal increase in workload for trial courts in the Judicial Department. If a fiduciary pursues a court order for compliance in instances where a custodian fails to comply with the law, a judge will need to review the request for a court order, which may require a hearing, and issue a court order of sufficient specificity to allow for access of electronic records/assets as outlined in the bill when appropriate. Such requests are expected to be infrequent and can be addressed within existing resources.

## **Effective Date**

The bill takes effect August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

## **State and Local Government Contacts**

Judicial Department

Law

Legislative Legal Services