



ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

**Assembly Committee on Judiciary
Public Hearing, February 4, 2016**

Representative Ott and members of the Assembly Committee on Judiciary, thank you for affording me with the opportunity to testify on behalf of AB 695, relating to revised Uniform Fiduciary Access to Digital Assets.

SB 445, if enacted, would afford internet users with the ability to plan for the management and disposition of digital assets in a vein analogous to that of tangible property. In an era where new technology and digital data are commonplace, we felt it was imperative to bring Wisconsin law into the twenty-first century by protecting the digital assets of Badger State citizens.

Collectively, an individual's digital property and electronic communications are referred to as "digital assets" and the companies that store those assets are known as "custodians" of these records. Access to digital assets is usually governed by a terms-of-service agreement, herein referred to as TOSA, rather than by property law. This creates a problem when internet users perish or lose the ability to manage their own digital assets. The rights of ownership, control, privacy, and access are intertwined in a complex network of federal, state and privacy laws.

The aforementioned has resulted in fiduciaries of estates (executors/personal representatives) with very little legal authority or guidance on identifying, collecting, distributing, and settling a decedent's digital estate assets. Too often, the businesses that control a decedent's digital assets to refuse to recognize the fiduciary has any authority over such assets, and, thus, deny the fiduciary such access. For example, a personal representative often has trouble accessing in an e-mail account of a decedent.

Currently, the Stored Communications Act and the Computer Fraud Abuse Act at the federal level, dictate access to digital assets. Due to rapidly changing technology and the fact that these bills were passed nearly thirty years ago, in 1986, states have begun passing legislation to fill the gaps where the aforementioned federal laws are insufficient.



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Assembly Bill 695 adopts the Revised Uniform Fiduciary Access to Digital Assets Act, as approved and recommended by the National Conference of Commissioners on Uniform State Laws in July 2015. The bill provides default provisions related to a fiduciary's right to access digital assets. Under this bill, a digital asset is an electronic record in which an individual has a right or interest. Examples of digital assets include information stored on a computer or other digital device, content uploaded onto a website, text messages, and rights in domain names or rights associated with online games. A fiduciary, under this bill, is a personal representative, guardian, conservator, agent under a power of attorney, or a trustee.

I strongly encourage my colleagues on this committee to support SB 695, as it brings Wisconsin law into the twenty-first century and affords individuals with the ability to manage their digital assets.

I would, at this time, be more than willing to answer any questions members of the committee might have. Thank you for your time and consideration.



AB-695: Creating the Uniform Fiduciary Access to Digital Assets

February 4, 2016

Colleagues,

In this day and age, nearly everyone has an email account or other accounts based online. States around the country have been faced with the challenge of dealing with these accounts after someone has died or is incapacitated.

Collectively, a person's digital property and electronic communications are referred to as "digital assets" and the companies that store those assets on their servers are known as the "custodians" of these records. Access to digital assets is usually governed by a terms-of-service agreement (TOSA) rather than by property law. This creates problems when Internet users die or otherwise lose the ability to manage their own digital assets. The rights of ownership, control, privacy, and access are intertwined in a complex web of federal, state, and privacy law.

This has resulted in fiduciaries of estates (executors / personal representatives) with very little legal authority or guidance on identifying, collecting, distributing, and settling a decedent's digital estate assets. Too often, the businesses that control a decedent's digital assets refuse to recognize the fiduciary has any authority over such assets, and, thus, deny the fiduciary such access. For example, a personal representative often has trouble accessing an email account of a decedent.

In 2011, the Uniform Law Commission set out to create model state legislation which would help to clarify ambiguities in federal law regarding these digital assets.

AB 695 is based on this model legislation and gives Internet users the power to plan for the management and disposition of their digital assets in a similar way as they can make plans for their tangible property.



REAL PROPERTY, PROBATE & TRUST LAW SECTION

To: Assembly Judiciary Committee
Date: February 4, 2016
Re: Support of AB 695 – Relating to: Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)

The Real Property Probate Trust (RPPT) Section Board of the State Bar of Wisconsin supports the substitute amendment to AB 695 (RUFADAA).

The RPPT Board established a study committee to review the RUFADAA language and worked with the authors to draft changes to AB 695 to better conform the uniform law to Wisconsin statutes. The substitute amendment would accomplish and correct the following issues:

- 1.) The substitute amendment replaces the term “digital asset” with “**digital property**” to better integrate the uniform law into existing Wisconsin statutes and case law. This change will better enable courts and attorneys to better understand the application of RUFADAA with Wisconsin’s well-defined property law concepts.
- 2.) The amendment would seek to return AB 695 back to the original intent of the Uniform Law Commission on the tiered priority system and the online providers agreed upon language of having an online tool as the first mechanism for users to protect their digital property.
- 3.) The proposed amendment would combine and clean up duplicative and unnecessary language contained in AB 695 and add additional cross references to existing law, making it more understandable and readable in statute.
- 4.) The amendment further clarifies the drafted language on fiduciary duty.

If you have any additional questions please contact Cale Battles, Government Relations Coordinator, at (608) 250-6077 or cbattles@wisbar.org.

The RPPT Section requests your support of the substitute amendment to AB 695.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



STATE BAR OF WISCONSIN