

## FIDUCIARY ACCESS TO DIGITAL ASSETS

Mary Ann Cleary, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

### House Bill 5366

Sponsor: Rep. Andrea LaFontaine

### House Bill 5367

Sponsor: Rep. Dan Lauwers

### House Bill 5368

Sponsor: Rep. Kevin Cotter

### House Bill 5369

Sponsor: Rep. Tom Leonard

### House Bill 5370

Sponsor: Rep. Nancy E. Jenkins

Committee: Judiciary

Complete to 10-1-14

## A REVISED SUMMARY OF HOUSE BILLS 5366-5370 AS INTRODUCED 2-26-14

The bills amend various sections of the Estates and Protected Individuals Code (EPIC) to allow access to *digital assets* by conservators, trustees, personal representatives, and agents of durable powers of attorney.

The bills incorporate provisions similar to ones contained in the model act offered by the National Conference of Commissioners on Uniform State Laws (NCCUSL) entitled the "Uniform Fiduciary Access to Digital Assets Act." Both the model act and the bill package would give people the ability to plan for the management and disposition of their digital assets similarly to tangible assets such as a home or investments via instructions in a will, durable power of attorney, or trust, or to a conservator.

Generally speaking, House Bill 5368 defines several new terms and House Bills 5366-5367 and 5369-5370 amend in a similar manner sections of EPIC pertaining to conservators, personal representatives, agents appointed under a durable power of attorney (DPOA), and trustees to provide the following:

On receipt of a written request by a conservator, personal representative, trustee, or attorney-of-fact under a DPOA (hereinafter "representative") for access to, ownership of, or a copy of digital property, a digital custodian (such as a social media site) must provide the representative with the requested access, ownership, or copy, as applicable. The written request must be accompanied by a copy of the appropriate document that grants the representative power over digital property (e.g., a copy of the DPOA).

A digital custodian has 56 days to comply with the request after receiving it. If the digital custodian fails to comply within that time period, the representative may petition the court for an order directing compliance. A digital custodian would not be liable for an action carried out in compliance with this provision.

House Bill 5368 would amend EPIC (MCL 700.1103 et al.) by adding numerous definitions, including the following:

- "Digital asset" means electronic information created, generated, sent, communicated, received, or stored by electronic means on a digital service or digital device. Digital account includes a username, word, character, code, or contract right under a terms-of-service agreement.
- "Digital custodian" means a person that electronically stores digital property of a digital account holder or otherwise has control over digital property of the digital account holder.
- "Digital property" means the ownership and management of and rights related to a digital account and digital asset.
- "Digital service" means the delivery of digital information, such as data or content, and transactional services, such as online forms and benefits applications, across a variety of platforms, devices, and delivery mechanisms, such as websites, mobile applications, and social media.
- "Digital account" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing electronic information that provides access to a digital asset or a digital service.

House Bill 5366 adds and amends provisions pertaining to conservators (MCL 700.5407 et al.).

House Bill 5367 adds and amends provisions pertaining to personal representatives of deceased persons (MCL 700.3709 et al.)

House Bill 5369 adds and amends provisions pertaining to an attorney-of-fact under a durable power of attorney (MCL 700.5501 et al.).

House Bill 5370 adds and amends provisions pertaining to trustees (MCL 700.7817 et al.)

## **FISCAL IMPACT:**

The bills would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bills affected caseloads and related administrative costs.

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Robin Risko

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.