

## MODEL FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

**Summary:** *How to reconcile requests by fiduciaries and executors for access to the digital assets like electronic mail of the deceased, with nondisclosure duties under federal privacy law, has raised serious conflict of law and preemption questions for the states. Specifically, how should state law balance the interests of administering to the needs of an estate, with the privacy of electronic mail users and third party information contained in an email communication, while at the same time honoring the duties imposed on online service providers under the federal Electronic Communications Privacy Act (ECPA) to not disclose such content except under specific circumstances This model act clarifies the procedures for the estate of a deceased person to gain access to or obtain copies of the contents of the electronic mail account of that person. The act provides that access to or copies of the contents of the deceased's electronic mail account is authorized upon a written request to the electronic mail provider by the estate and an order by the court of probate for the state that is issued in accordance with the procedures of the federal ECPA and indemnifies the electronic mail provider from liability in compliance with the court's order.*

**Section 1. {Title}** This Act may be cited as the “Fiduciary Access to Digital Assets Act.”

### **Section 2. {General Rule}**

Access to decedents' electronic mail. – An electronic mail service provider shall provide, to the executor or administrator of the estate of a deceased person who was domiciled in this state at the time of his or her death, access to or copies of the contents of the electronic mail account of such deceased person upon receipt by the electronic mail service provider of:

- (1) A written request for such access or copies made by such executor or administrator, accompanied by a copy of the death certificate and a certified copy of the certificate of appointment as executor and administrator; and
- (2) An order of the court of probate that by law has jurisdiction of the estate of such deceased person, designating such executor or administrator as an agent for the subscriber, as defined in the Electronic Communications Privacy Act, 18 U.S.C. § 2701, on behalf of his/her estate, and ordering that the estate shall first indemnify the electronic mail service provider from all liability in complying with such order.

### **Section 3. {Severability Clause}**

### **Section 4. {Repealer Clause}**

### **Section 5. {Effective Clause}**