

Senate Commerce Committee

Angela Leach 271-3077

SB 93, relative to adoption of the Uniform Access to Digital Assets Act.

Hearing Date: February 7, 2017

Members of the Committee Present: Senators Innis, French, Sanborn and Lasky

Members of the Committee Absent : Senator Soucy

Bill Analysis: This bill adopts the revised uniform fiduciary access to digital assets act.

Sponsors:

Sen. Feltes

Sen. Hennessey

Rep. Kurk

Who supports the bill: Sponsors, Michael Panebianco, John MacIntosh- NH Bar Association, Doug McNutt- AARP

Who opposes the bill: None

Who is neutral on the bill: Paula Minnehan- NH Hospital Association

Summary of testimony presented:

Senator Sanborn stated that because of our ethics laws, he may or may not have a conflict with this bill but will participate.

Senator Feltes- NH doesn't currently have the Uniform Access to Digital Assets Act, a dozen states do and others are considering putting in place. Representative Kurk is in full support of this bill. We have so many digital assets from Facebook to online banking accounts, what happens when someone passes away and the executor or custodian of their will need access to those accounts to process the estate. This provides a mechanism to do that. If someone signed an agreement that they are not to provide access to an account barring some additional court processing that access would not be provided. This bill has the specific safe guards. It is a uniform act to help our court system. It allows for processing digital access. Encourage the committee not to tinker with the bill considering all of the national companies have signed onto this act. Adjusts the processing of the estates at the time of death, in a way other states have done. Offered an amendment.

Michael Panebianco- Chair of the Trust and Estates Law Section of the NH Bar Association (Support)- NH Law does not give fiduciaries the authority to manage a person's digital property like computer files, web domains and virtual currency as they can with tangible personal property. The NH Bar Association voted in favor of adopting the Revised Uniform Fiduciary Access to Digital Assets Act. Twenty-one states have adopted this act and it has been introduced in additional twelve states. Endorsed by the Association of American Retired Persons, the Center for Democracy and Technology, Facebook, Google, and the National Academy of Elder Law Attorneys. Really important that this is uniform law and encouraged the committee to adopt Senator Feltes amendment. The law gives fiduciaries legal authority to manage digital assets and electronic communications in the same way they manage tangible assets and financial accounts. And to give custodians of digital assets and electronic communications legal authority to deal with the fiduciaries of their user while respecting the users reasonable expectation of privacy for personal communications. Examples of these include digital photos, digital music, client lists and online gaming items. The content of an electronic communication includes the subject line and the body of a user's email messages, text messages, and other messages between two private parties. A fiduciary never has access to the content of electronic communications without the user's consent. A fiduciary may have access to a catalogue of the user's electronic

communications which is a list of communications showing the address of the sender and recipient and the date and time the message was sent.

Paula Minnehan- NH Hospital Association (Neutral) the Hospital Association is requesting an amendment which will continue to protect patients protected health information. What are the digital assets that are affected in the bill. The language of the bill does not limit that access to that information exclusively. A patient may have access to their medical records online, as it relates to the bill it could be construed that a patient can be said to have an “account” with a healthcare provider. Believe that the bill can be interpreted to provide the fiduciaries access to both a patient portal and also to all the data stored in electronic medical records. This is problematic because under HIPAA and other state and federal laws, access to protected health information by personal representatives may be more limited than that of the user. A specific power of attorney for healthcare is needed to access protected health care information. This bill would allow general power of attorney with authority over digital assets to access protected health information. A person having guardianship over the estate of a person may be able to access protected health information whereas they currently do not. In order to ensure a patient’s health information is protected, an amendment should be adopted that the chapter should not apply to digital assets of protected health information unless the fiduciary, representative, conservator or trustee has the authority to access this information under other applicable law.

Date Hearing Report completed: February 10, 2017