



**Statement of the Massachusetts Bankers Association in Support of H 1749 & S 1033,
An Act for Uniform Fiduciary Access to Digital Assets
Joint Committee on the Judiciary
November 16, 2021**

The Massachusetts Bankers Association, which represents 120 commercial, cooperative and savings banks and federal savings banks and savings and loan associations with more than 72,000 employees located throughout the Commonwealth and New England, appreciates the opportunity to voice our support for H 1749 and S 1033, An Act for Uniform Fiduciary Access to Digital Assets Act (UFADAA). These pieces of legislation, which were introduced by Representative Jay Livingstone and Senator Barry Finegold, are based on a revised model bill recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL) that has been enacted in 45 states.

Significant increases in the use of online banking, social media and cloud storage of photos and other information has transformed how we live and maintain our personal records. Less than a generation ago, few of us had email accounts, social media did not exist nor did online or mobile banking. When an individual died, the executor, now called a personal representative, could search the paper records, tax returns, regular mail or end-of-year documents of the deceased to identify information necessary to properly settle the estate.

Digital assets may have real value, both monetary and sentimental, but they also present novel privacy concerns. While these innovations have made our lives simpler, more connected, and more reliant on technology, they have also created a number of challenges, including the use of and accessibility to a person's digital assets which are stored on various companies' servers and accessed via the Internet through usernames and passwords. Access to digital assets is usually governed by restrictive terms-of-service agreements provided by the custodian and routinely agreed to by the user by a simple click. These agreements can create significant problems when account holders die or otherwise lose the ability to manage their affairs.

Large social media firms, such as Facebook, Google, Yahoo, and others objected to the language in the initial UFADAA model act claiming that the legislation did not sufficiently respect the legal obligation these firms believed they had to their customer not to divulge any information on their accounts to any other party without the account owner's permission. This difference of opinion served neither the fiduciary or social media community and certainly provided no benefits to those simply attempting to settle an estate or otherwise perform their fiduciary duties.

After this initial negative backlash, representatives of all the interested parties held a series of additional meetings and developed a revised version of UFADAA. The revised language, known as RUFADAA, has now been enacted by 45 states nationwide and is what is before you today – appropriately-tailored for Massachusetts' existing statutes – in H 1749 and S 1033.

We again applaud the efforts of both Representative Livingstone and Senator Finegold for recognizing the pressing need to address this important issue this session. MBA strongly believes that adopting these bills will finally put the Commonwealth on equal playfield with the growing list of states that have already enacted RUFADAA. Unlike some of the other bills before you today, only the uniform act's **full revised language** establishes default rules that attempt to balance the user's privacy interest with the fiduciary's need for access by making a distinction between the "content of electronic communications," the "catalogue of electronic communications", and other types of digital assets.

The Association and our member institutions believe that RUFADAA is an appropriate step forward to address the issue of digital assets after death. The full model law establishes a framework under which fiduciaries can meet their obligations while recognizing the privacy obligations other third parties must meet. These protections only exist when the legislation is adopted in its full form.

Thank you for considering our views and we look forward to working with you to advance this important piece of legislation this session.