

Comparison of Privacy Expectation Afterlife and Choice Act (HB 2647) to the Uniform Fiduciary Access to Digital Assets Act (SB 369)

Issue	UFADAA	Tech Industry's PEAC
1. Access by a guardian	No, unless ordered by the Court.	Does not address.
2. Access by an agent under a POA	Yes for all digital assets except the content of communications, unless the POA grants access.	Does not address.
3. Access by a trustee	Yes, for digital assets owned by the trust.	Does not address.
4. Access by a personal representative	Yes, unless the decedent restricts access while alive.	No, unless granted by court order.
5. Access to content of communications	Yes, unless disclosure violates Federal law.	No.
6. Exceptions to access by personal representative	Access may be denied by an express act of the decedent using an online tool or in the decedent's will or trust.	Terms of service agreements may prohibit access by court order. Access may be denied if compliance creates a burden for custodian.
7. Immunity to provider for granting access under the rules provided	Yes	Yes

Concerns and Deficiencies In PEAC Court Order Procedure

A court order is available only if there is an open probate. PEAC does nothing for decedents who avoid probate proceedings through trusts, beneficiary designations and joint ownership. Thus, PEAC will cause unnecessary probate filings for those whose estate plans are designed to avoid probate, and unnecessary costs for anyone seeking an order.

A PEAC court order is only available if the personal representative knows the unique identifier assigned by the provider. There is no ability to otherwise obtain that information and a court order is impossible without it.

A PEAC court order is only available if the decedent has specifically granted access to the personal representative in their will or in a terms of service agreement. Otherwise, the order must be denied and obtaining access is not possible.

A PEAC court order is only available only if the decedent was the sole user of the account.

PEAC prohibits the court from ordering access to any record older than one year.

PEAC allows a provider to seek an order quashing the access order if compliance would be unduly burdensome. This would result in additional court proceedings and raises the possibility that access could be denied even after the personal representative has incurred the expense of obtaining a court order.

PEAC allows a provider to ignore a court order if access is contrary to provisions in the terms-of-service agreement. Consumers rarely read these terms and conditions. This would allow every provider to opt out of court ordered access by including a contrary provision in their boilerplate terms and conditions.

PEAC denies access to any assets that have only sentimental value (i.e. family photos or correspondence).

PEAC denies access to contents of communications and stored contents, including the subject line. Content is critical for the fiduciary to perform their legitimate duties.

PEAC allows providers to deny access to all fiduciaries other than a personal representative. A personal representative has access to digital records, only if the personal representative obtains a court order. The criteria for obtaining a court order are difficult or impossible to satisfy. Even if an order is obtained, the provider may deny access pursuant to its terms of service, and may always deny access to content. PEAC is not a reasonable alternative to UFADAA. It is intentionally designed to frustrate or prohibit meaningful access in all cases.