

**Senate Study Bill 3035 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON SODDERS)

**A BILL FOR**

1 An Act relating to a fiduciary's access to digital assets and  
2 including applicability provisions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 633.90 Power of a fiduciary to  
2 access digital assets.

3 Except as modified by a court order or limited in the  
4 instrument creating the fiduciary relationship, a fiduciary may  
5 exercise all rights and powers granted to such fiduciary under  
6 chapter 638.

7 Sec. 2. Section 633A.4402, Code 2016, is amended by adding  
8 the following new subsection:

9 NEW SUBSECTION. 33. Exercise all rights and powers granted  
10 to a trustee under chapter 638.

11 Sec. 3. Section 633B.201, subsection 1, Code 2016, is  
12 amended by adding the following new paragraph:

13 NEW PARAGRAPH. *i.* Exercise all rights and powers granted  
14 to an agent under chapter 638.

15 Sec. 4. NEW SECTION. 638.1 Short title.

16 This chapter may be cited as the "*Iowa Uniform Fiduciary*  
17 *Access to Digital Assets Act*".

18 Sec. 5. NEW SECTION. 638.2 Definitions.

19 As used in this chapter, unless the context otherwise  
20 requires:

21 1. "*Account*" means an arrangement under a terms-of-service  
22 agreement in which a custodian carries, maintains, processes,  
23 receives, or stores a digital asset of the user or provides  
24 goods or services to the user.

25 2. "*Agent*" means an attorney-in-fact granted authority under  
26 a durable or nondurable power of attorney under chapter 633B.

27 3. "*Carries*" means engages in the transmission of an  
28 electronic communication.

29 4. "*Catalogue of electronic communications*" means  
30 information that identifies each person with which a user has  
31 had an electronic communication, the time and date of the  
32 communication, and the electronic address of the person.

33 5. "*Conservator*" means the same as defined in section  
34 633.3. "*Conservator*" includes a person appointed to have the  
35 custody and control of the property of a ward in a limited

1 conservatorship unless otherwise provided by order of the  
2 court.

3 6. "*Content of an electronic communication*" means information  
4 concerning the substance or meaning of the communication to  
5 which all of the following apply:

6 a. The communication has been sent or received by a user.

7 b. The communication is in electronic storage by a  
8 custodian providing an electronic-communication service to the  
9 public or is carried or maintained by a custodian providing a  
10 remote-computing service to the public.

11 c. The communication is not readily accessible to the  
12 public.

13 7. "*Court*" means a district court in this state.

14 8. "*Custodian*" means a person that carries, maintains,  
15 processes, receives, or stores a digital asset of a user.

16 9. "*Designated recipient*" means a person chosen by a user  
17 using an online tool to administer digital assets of the user.

18 10. "*Digital asset*" means an electronic record in which an  
19 individual has a right or interest. "*Digital asset*" does not  
20 include an underlying asset or liability unless the asset or  
21 liability is itself an electronic record. "*Digital asset*" does  
22 not include health information or individually identifiable  
23 health information as those terms are defined in the federal  
24 Health Insurance Portability and Accountability Act of 1996,  
25 Pub. L. No. 104-191.

26 11. "*Electronic*" means relating to technology having  
27 electrical, digital, magnetic, wireless, optical,  
28 electromagnetic, or similar capabilities.

29 12. "*Electronic communication*" has the meaning set forth in  
30 18 U.S.C. §2510(12).

31 13. "*Electronic-communication service*" means a custodian  
32 that provides to a user the ability to send or receive an  
33 electronic communication.

34 14. "*Fiduciary*" means a personal representative,  
35 conservator, guardian, agent, or trustee.

1 15. "*Guardian*" means the same as defined in section 633.3.  
2 "*Guardian*" includes a person appointed to have the custody and  
3 care of the person of the ward in a limited guardianship unless  
4 otherwise provided by order of the court.

5 16. "*Information*" means data, text, images, videos, sounds,  
6 codes, computer programs, software, databases, or the like.

7 17. "*Online tool*" means an electronic service provided by  
8 a custodian that allows the user, in an agreement distinct  
9 from the terms-of-service agreement between the custodian and  
10 user, to provide directions for disclosure or nondisclosure of  
11 digital assets to a third person.

12 18. "*Person*" means an individual, estate, business  
13 or nonprofit entity, public corporation, government or  
14 governmental subdivision, agency, instrumentality, or other  
15 legal entity.

16 19. "*Personal representative*" means the same as defined in  
17 section 633.3.

18 20. "*Power of attorney*" means the same as defined in section  
19 633B.102.

20 21. "*Principal*" means the same as defined in section  
21 633B.102.

22 22. "*Record*" means information that is inscribed on a  
23 tangible medium or that is stored in an electronic or other  
24 medium and is retrievable in perceivable form.

25 23. "*Remote-computing service*" means a custodian that  
26 provides to a user computer-processing services or the storage  
27 of digital assets by means of an electronic communications  
28 system, as defined in 18 U.S.C. §2510(14).

29 24. "*Terms-of-service agreement*" means an agreement that  
30 controls the relationship between a user and a custodian.

31 25. "*Trustee*" means the same as defined in section 633.3 or  
32 633A.1102.

33 26. "*User*" means a person that has an account with a  
34 custodian.

35 27. "*Ward*" means an individual for whom a conservator or

1 guardian has been appointed. "Ward" includes an individual  
2 for whom an application for the appointment of a conservator  
3 or guardian is pending and for which a court order authorizing  
4 access under this chapter has been granted.

5 28. "Will" means the same as defined in section 633.3.

6 Sec. 6. NEW SECTION. **638.3 Applicability.**

7 1. This chapter applies to all of the following:

- 8 a. A fiduciary acting under a will or power of attorney  
9 executed before, on, or after the effective date of this Act.  
10 b. A personal representative acting for a decedent who died  
11 before, on, or after the effective date of this Act.  
12 c. A conservator or guardian acting for a ward on or after  
13 the effective date of this Act.  
14 d. A trustee acting under a trust created before, on, or  
15 after the effective date of this Act.

16 2. This chapter applies to a custodian if the user resides  
17 in this state or resided in this state at the time of the user's  
18 death.

19 3. This chapter does not apply to a digital asset of an  
20 employer used by an employee in the ordinary course of the  
21 employer's business.

22 Sec. 7. NEW SECTION. **638.4 User direction for disclosure**  
23 **of digital assets.**

24 1. A user may use an online tool to direct the custodian to  
25 disclose or not to disclose some or all of the user's digital  
26 assets, including the content of electronic communications. If  
27 the online tool allows the user to modify or delete a direction  
28 at any time, a direction regarding disclosure using an online  
29 tool overrides a contrary direction by the user in a will,  
30 trust, power of attorney, or other record.

31 2. If a user has not used an online tool to give direction  
32 under subsection 1, or if the custodian has not provided an  
33 online tool, the user may allow or prohibit in a will, trust,  
34 power of attorney, or other record, disclosure to a fiduciary  
35 of some or all of the user's digital assets, including the

1 content of electronic communications sent or received by the  
2 user.

3 3. A user's direction under subsection 1 or 2 overrides a  
4 contrary provision in a terms-of-service agreement that does  
5 not require the user to act affirmatively and distinctly from  
6 the user's assent to the terms of service.

7 **Sec. 8. NEW SECTION. 638.5 Terms-of-service agreement.**

8 1. This chapter does not change or impair a right of a  
9 custodian or a user under a terms-of-service agreement to  
10 access and use digital assets of the user.

11 2. This chapter does not give a fiduciary any new or  
12 expanded rights other than those held by the user for whom, or  
13 for whose estate, the fiduciary acts or represents.

14 3. A fiduciary's access to digital assets may be modified or  
15 eliminated by a user, by federal law, or by a terms-of-service  
16 agreement if the user has not provided direction under section  
17 638.4.

18 **Sec. 9. NEW SECTION. 638.6 Procedure for disclosing digital  
19 assets.**

20 1. When disclosing digital assets of a user under this  
21 chapter, the custodian may at its sole discretion do any of the  
22 following:

23 *a.* Grant a fiduciary or designated recipient full access to  
24 the user's account.

25 *b.* Grant a fiduciary or designated recipient partial access  
26 to the user's account sufficient to perform the tasks with  
27 which the fiduciary or designated recipient is charged.

28 *c.* Provide a fiduciary or designated recipient a copy in  
29 a record of any digital asset that, on the date the custodian  
30 received the request for disclosure, the user could have  
31 accessed if the user were alive, was competent, and had access  
32 to the account.

33 2. A custodian may assess a reasonable administrative  
34 charge for the cost of disclosing digital assets under this  
35 chapter.

1 3. A custodian need not disclose under this chapter a  
2 digital asset deleted by a user.

3 4. If a user directs or a fiduciary requests a custodian to  
4 disclose some, but not all, of the user's digital assets, the  
5 custodian need not disclose the assets if segregation of the  
6 assets would impose an undue burden on the custodian. If the  
7 custodian believes the direction or request imposes an undue  
8 burden, the custodian or fiduciary may seek an order from the  
9 court to disclose any of the following:

10 a. A subset of the user's digital assets limited by date.

11 b. All of the user's digital assets to the fiduciary or  
12 designated recipient.

13 c. None of the user's digital assets.

14 d. All of the user's digital assets to the court for review  
15 in camera.

16 Sec. 10. NEW SECTION. 638.7 Disclosure of content of  
17 electronic communications of deceased user.

18 If a deceased user consented or a court directs disclosure  
19 of the contents of electronic communications of the user, the  
20 custodian shall disclose to the personal representative of the  
21 estate of the user the content of an electronic communication  
22 sent or received by the user if the personal representative  
23 gives the custodian all of the following:

24 1. A written request for disclosure in physical or  
25 electronic form.

26 2. A certified copy of the death certificate of the user.

27 3. A certified copy of the letters of appointment of the  
28 personal representative, an original affidavit made pursuant  
29 to section 633.356, or a file-stamped copy of the court order  
30 authorizing the personal representative to administer the  
31 user's estate.

32 4. Unless the user provided direction using an online tool,  
33 a copy of the user's will, trust, power of attorney, or other  
34 record evidencing the user's consent to disclosure of the  
35 content of electronic communications.

- 1 5. If requested by the custodian, any of the following:  
2 a. A number, username, address, or other unique subscriber  
3 or account identifier assigned by the custodian to identify the  
4 user's account.  
5 b. Evidence linking the account to the user.  
6 c. A finding by the court of any of the following:  
7 (1) The user had a specific account with the custodian,  
8 identifiable by the information specified in paragraph "a".  
9 (2) Disclosure of the content of electronic communications  
10 of the user would not violate 18 U.S.C. §2701 et seq., 47  
11 U.S.C. §222, or other applicable law.  
12 (3) Unless the user provided direction using an online  
13 tool, that the user consented to disclosure of the content of  
14 electronic communications.  
15 (4) Disclosure of the content of electronic communications  
16 of the user is reasonably necessary for administration of the  
17 estate.

18 Sec. 11. NEW SECTION. **638.8 Disclosure of other digital**  
19 **assets of deceased user.**

20 Unless the user prohibited disclosure of digital assets or  
21 the court directs otherwise, a custodian shall disclose to the  
22 personal representative of the estate of a deceased user a  
23 catalogue of electronic communications sent or received by the  
24 user and digital assets, other than the content of electronic  
25 communications, of the user, if the representative gives the  
26 custodian all of the following:

- 27 1. A written request for disclosure in physical or  
28 electronic form.  
29 2. A certified copy of the death certificate of the user.  
30 3. A certified copy of the letters of appointment of the  
31 personal representative, an original affidavit made pursuant  
32 to section 633.356, or a file-stamped copy of the court order  
33 authorizing the personal representative to administer the  
34 user's estate.  
35 4. If requested by the custodian, any of the following:

1     *a.* A number, username, address, or other unique subscriber  
2 or account identifier assigned by the custodian to identify the  
3 user's account.

4     *b.* Evidence linking the account to the user.

5     *c.* An affidavit stating that disclosure of the user's  
6 digital assets is reasonably necessary for administration of  
7 the estate.

8     *d.* A finding by the court of any of the following:

9         (1) The user had a specific account with the custodian,  
10 identifiable by the information specified in paragraph "a".

11         (2) Disclosure of the user's digital assets is reasonably  
12 necessary for administration of the estate.

13     **Sec. 12. NEW SECTION. 638.9 Disclosure of content of**  
14 **electronic communications of principal.**

15     To the extent a power of attorney expressly grants an agent  
16 authority over the content of electronic communications sent  
17 or received by the principal and unless directed otherwise by  
18 the principal or the court, a custodian shall disclose to the  
19 agent the content if the agent gives the custodian all of the  
20 following:

21         1. A written request for disclosure in physical or  
22 electronic form.

23         2. An original or copy of the power of attorney expressly  
24 granting the agent authority over the content of electronic  
25 communications of the principal.

26         3. A certification by the agent, under penalty of perjury,  
27 that the power of attorney is in effect. The certification  
28 form provided in section 633B.302 shall satisfy the requirement  
29 of this subsection.

30         4. If requested by the custodian, any of the following:

31             *a.* A number, username, address, or other unique subscriber  
32 or account identifier assigned by the custodian to identify the  
33 principal's account.

34             *b.* Evidence linking the account to the principal.

35     **Sec. 13. NEW SECTION. 638.10 Disclosure of other digital**

1 **assets of principal.**

2 Unless otherwise ordered by the court, directed by the  
3 principal, or provided by a power of attorney, a custodian  
4 shall disclose to an agent with specific authority over digital  
5 assets or general authority to act on behalf of a principal  
6 a catalogue of electronic communications sent or received by  
7 the principal and digital assets, other than the content of  
8 electronic communications, of the principal if the agent gives  
9 the custodian all of the following:

10 1. A written request for disclosure in physical or  
11 electronic form.

12 2. An original or a copy of the power of attorney that gives  
13 the agent specific authority over digital assets or general  
14 authority to act on behalf of the principal.

15 3. A certification by the agent, under penalty of perjury,  
16 that the power of attorney is in effect.

17 4. If requested by the custodian, any of the following:

18 a. A number, username, address, or other unique subscriber  
19 or account identifier assigned by the custodian to identify the  
20 principal's account.

21 b. Evidence linking the account to the principal.

22 **Sec. 14. NEW SECTION. 638.11 Disclosure of digital assets**  
23 **held in trust when trustee is original user.**

24 Unless otherwise ordered by the court or provided in a trust,  
25 a custodian shall disclose to a trustee that is an original  
26 user of an account any digital asset of the account held in  
27 trust, including a catalogue of electronic communications of  
28 the trustee and the content of electronic communications.

29 **Sec. 15. NEW SECTION. 638.12 Disclosure of contents of**  
30 **electronic communications held in trust when trustee not original**  
31 **user.**

32 Unless otherwise ordered by the court, directed by the user,  
33 or provided in a trust, a custodian shall disclose to a trustee  
34 that is not an original user of an account the content of an  
35 electronic communication sent or received by an original or

1 successor user and carried, maintained, processed, received,  
2 or stored by the custodian in the account of the trust if the  
3 trustee gives the custodian all of the following:

4 1. A written request for disclosure in physical or  
5 electronic form.

6 2. A certified copy of the trust instrument or a  
7 certification of trust under section 633A.4604 that  
8 includes consent to disclosure of the content of electronic  
9 communications to the trustee.

10 3. A certification by the trustee, under penalty of perjury,  
11 that the trust exists and the trustee is a currently acting  
12 trustee of the trust.

13 4. If requested by the custodian, any of the following:

14 a. A number, username, address, or other unique subscriber  
15 or account identifier assigned by the custodian to identify the  
16 trust's account.

17 b. Evidence linking the account to the trust.

18 Sec. 16. NEW SECTION. 638.13 Disclosure of other digital  
19 assets held in trust when trustee not original user.

20 Unless otherwise ordered by the court, directed by the  
21 user, or provided in a trust, a custodian shall disclose, to a  
22 trustee that is not an original user of an account, a catalogue  
23 of electronic communications sent or received by an original  
24 or successor user and stored, carried, or maintained by the  
25 custodian in an account of the trust and any digital assets,  
26 other than the content of electronic communications, in which  
27 the trust has a right or interest if the trustee gives the  
28 custodian all of the following:

29 1. A written request for disclosure in physical or  
30 electronic form.

31 2. A certified copy of the trust instrument or a  
32 certification of trust under section 633A.4604.

33 3. A certification by the trustee, under penalty of perjury,  
34 that the trust exists and the trustee is a currently acting  
35 trustee of the trust.

1 4. If requested by the custodian, any of the following:

2 a. A number, username, address, or other unique subscriber  
3 or account identifier assigned by the custodian to identify the  
4 trust's account.

5 b. Evidence linking the account to the trust.

6 Sec. 17. NEW SECTION. **638.14 Disclosure of digital assets**  
7 **to conservator or guardian of a ward.**

8 1. After an opportunity for a hearing to all interested  
9 parties, the court may grant a conservator or guardian access  
10 to the digital assets of a ward.

11 2. Unless otherwise ordered by the court or directed by the  
12 user, a custodian shall disclose to a conservator or guardian  
13 the catalogue of electronic communications sent or received  
14 by a ward and any digital assets, other than the content of  
15 electronic communications, in which the ward has a right or  
16 interest if the conservator or guardian gives the custodian all  
17 of the following:

18 a. A written request for disclosure in physical or  
19 electronic form.

20 b. A file-stamped copy of the court order that gives the  
21 conservator or guardian authority over the digital assets of  
22 the ward.

23 c. If requested by the custodian, any of the following:

24 (1) A number, username, address, or other unique subscriber  
25 or account identifier assigned by the custodian to identify the  
26 account of the ward.

27 (2) Evidence linking the account to the ward.

28 3. If the conservatorship or guardianship is not limited,  
29 the conservator or guardian may request a custodian of the  
30 digital assets of the ward to suspend or terminate an account  
31 of the ward for good cause. A request made under this section  
32 must be accompanied by a file-stamped copy of the court order  
33 establishing the conservatorship or guardianship.

34 Sec. 18. NEW SECTION. **638.15 Fiduciary duty and authority.**

35 1. The legal duties imposed on a fiduciary charged with

1 managing tangible property apply to the management of digital  
2 assets, including all of the following:

- 3 a. The duty of care.
- 4 b. The duty of loyalty.
- 5 c. The duty of confidentiality.

6 2. All of the following apply to a fiduciary's authority  
7 with respect to a digital asset of a user:

- 8 a. Except as otherwise provided in section 638.4, the  
9 fiduciary's authority is subject to the applicable terms of  
10 service.
- 11 b. The fiduciary's authority is subject to other applicable  
12 law, including copyright law.
- 13 c. The fiduciary's authority is limited by the scope of the  
14 fiduciary's duties.
- 15 d. The fiduciary's authority shall not be used to  
16 impersonate the user.

17 3. A fiduciary with authority over the property of a  
18 decedent, ward, principal, or settlor has the right to access  
19 any digital asset in which the decedent, ward, principal, or  
20 settlor had a right or interest and that is not held by a  
21 custodian or subject to a terms-of-service agreement.

22 4. A fiduciary acting within the scope of the fiduciary's  
23 duties is an authorized user of the property of the decedent,  
24 ward, principal, or settlor for the purpose of applicable  
25 computer-fraud and unauthorized-computer-access laws, including  
26 section 716.6B.

27 5. A fiduciary with authority over the tangible, personal  
28 property of a decedent, ward, principal, or settlor possesses  
29 all of the following authority:

- 30 a. Has the right to access the property and any digital  
31 asset stored in the property.
- 32 b. Is an authorized user for the purpose of computer-fraud  
33 and unauthorized-computer-access laws, including section  
34 716.6B.

35 6. A custodian may disclose information in an account to

1 a fiduciary of the user when the information is required to  
2 terminate an account used to access digital assets licensed to  
3 the user.

4 7. A fiduciary of a user may request a custodian to  
5 terminate the user's account. A request for termination must  
6 be in writing, in either physical or electronic form, and  
7 accompanied by all of the following:

8 a. If the user is deceased, a certified copy of the death  
9 certificate of the user.

10 b. A certified copy of the letters of appointment of the  
11 personal representative, an original affidavit made pursuant  
12 to section 633.356, a file-stamped copy of the court order  
13 authorizing the personal representative to administer the  
14 user's estate, power of attorney, or trust, including a  
15 certification of trust, giving the fiduciary authority over the  
16 account.

17 c. If requested by the custodian, any of the following:

18 (1) A number, username, address, or other unique subscriber  
19 or account identifier assigned by the custodian to identify the  
20 user's account.

21 (2) Evidence linking the account to the user.

22 (3) A finding by the court that the user had a specific  
23 account with the custodian, identifiable by the information  
24 specified in subparagraph (1).

25 Sec. 19. NEW SECTION. 638.16 Custodian compliance and  
26 immunity.

27 1. Not later than forty-five days after receipt of the  
28 information required under sections 638.7 through 638.14, a  
29 custodian shall comply with a request under this chapter from a  
30 fiduciary or designated recipient to disclose digital assets or  
31 terminate an account. If the custodian fails to comply, the  
32 fiduciary or designated recipient may apply to the court for  
33 an order directing compliance.

34 2. An order under subsection 1 directing compliance must  
35 contain a finding that compliance is not in violation of 18

1 U.S.C. §2702.

2 3. A custodian may notify the user that a request for  
3 disclosure or to terminate an account was made under this  
4 chapter.

5 4. A custodian may deny a request under this chapter from  
6 a fiduciary or designated recipient for disclosure of digital  
7 assets or to terminate an account if the custodian is aware of  
8 any lawful access to the account following the receipt of the  
9 fiduciary's request.

10 5. This chapter does not limit a custodian's ability  
11 to obtain or require a fiduciary or designated recipient  
12 requesting disclosure or termination under this chapter to  
13 obtain a court order which finds all of the following:

14 a. That the account belongs to the ward or principal.

15 b. That there is sufficient consent from the ward or  
16 principal to support the requested disclosure.

17 c. Any specific factual finding required by any applicable  
18 law other than this chapter.

19 6. A custodian and the custodian's officers, employees, and  
20 agents are immune from liability for an act or omission done in  
21 good faith in compliance with this chapter.

22 Sec. 20. NEW SECTION. 638.17 **Uniformity of application and**  
23 **construction.**

24 In applying and construing this chapter, consideration must  
25 be given to the need to promote uniformity of the law with  
26 respect to this chapter's subject matter among states that  
27 enact the revised uniform fiduciary access to digital assets  
28 Act.

29 Sec. 21. NEW SECTION. 638.18 **Relation to Electronic**  
30 **Signatures in Global and National Commerce Act.**

31 This chapter modifies, limits, or supersedes the federal  
32 Electronic Signatures in Global and National Commerce Act, 15  
33 U.S.C. §7001 et seq., but does not modify, limit, or supersede  
34 section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize  
35 electronic delivery of any of the notices described in section

1 103(b) of that Act, 15 U.S.C. §7003(b).

2 EXPLANATION

3 The inclusion of this explanation does not constitute agreement with  
4 the explanation's substance by the members of the general assembly.

5 This bill relates to a fiduciary's access to digital assets  
6 and includes applicability provisions.

7 The bill defines "digital asset" as an electronic record in  
8 which an individual has a right or interest. "Digital asset"  
9 does not include an underlying asset or liability unless the  
10 asset or liability is itself an electronic record. "Digital  
11 asset" does not include health information or individually  
12 identifiable health information as those terms are defined in  
13 the federal Health Insurance Portability and Accountability  
14 Act. "Fiduciary" is defined as an agent under a power of  
15 attorney pursuant to Code chapter 633B, a conservator,  
16 guardian, personal representative, or trustee as each is  
17 defined under Code section 633.3, or a trustee as defined in  
18 Code section 633A.1102. "Custodian" is defined as a person  
19 that carries, maintains, processes, receives, or stores a  
20 digital asset of a user. "User" is defined as a person that has  
21 an account with a custodian.

22 The bill provides that a user may direct a custodian to  
23 disclose or not to disclose the user's digital assets to a  
24 fiduciary through an online tool, a will, trust, power of  
25 attorney, or other record. A terms-of-service agreement which  
26 the user agreed to may also provide whether the custodian shall  
27 disclose the user's digital assets to a fiduciary.

28 The bill provides that a custodian shall disclose the  
29 electronic communications of a deceased user to the personal  
30 representative of the estate if the personal representative  
31 provides the custodian a written request for disclosure,  
32 a certified copy of the death certificate, letters of  
33 appointment, and documentation evidencing the user's consent  
34 to disclosure of the content of electronic communications,  
35 unless the user provided such direction in an online

1 tool. A custodian shall disclose other digital assets of a  
2 deceased user to the personal representative if the personal  
3 representative provides a written request for disclosure,  
4 a certified copy of the death certificate, and letters of  
5 appointment.

6 The bill provides that if a power of attorney expressly  
7 grants an agent authority over the content of electronic  
8 communications, a custodian shall disclose such content if  
9 the agent provides to the custodian a written request for  
10 disclosure, a copy of the power of attorney expressly granting  
11 the agent authority over the content of the principal's  
12 electronic communications, and a certification by the agent  
13 that the power of attorney is in effect. Where a power of  
14 attorney grants an agent specific authority over digital  
15 assets or general authority to act on behalf of the principal,  
16 the custodian shall disclose a catalogue of electronic  
17 communications sent or received by the principal and digital  
18 assets, other than the content of electronic communications,  
19 if the agent provides to the custodian a written request for  
20 disclosure, a copy of the power of attorney giving the agent  
21 specific authority over digital assets or general authority  
22 to act on behalf of the principal, and a certification by the  
23 agent that the power of attorney is in effect.

24 The bill provides that a custodian shall disclose to a  
25 trustee that is an original user of an account any digital  
26 asset of the account held in trust. The bill provides that  
27 unless otherwise ordered by the court, directed by the user, or  
28 provided in a trust, a custodian shall disclose to a trustee  
29 that is not an original user the content of an electronic  
30 communication sent or received by a user if the trustee gives  
31 the custodian a written request, a certified copy of the trust  
32 that includes consent to disclose the content of electronic  
33 communications to the trustee, and a certification by the  
34 trustee that the trust exists and the trustee is a currently  
35 acting trustee. A custodian shall disclose to a trustee

1 digital assets in which the trust has an interest and that  
2 are not electronic communications if the trustee gives the  
3 custodian a written request, a certified copy of the trust  
4 instrument or certification, and a certification by the trustee  
5 that the trust exists and the trustee is a currently acting  
6 trustee.

7 The bill provides that after an opportunity for a hearing,  
8 the court may grant a conservator or guardian access to  
9 a ward's digital assets. The bill also provides that a  
10 custodian shall disclose to a conservator or guardian the  
11 catalogue of electronic communications of a ward and any of  
12 the ward's other digital assets, other than the content of  
13 electronic communications, if the conservator or guardian  
14 provides the custodian with a written request for disclosure  
15 and a copy of the court order that gives the conservator or  
16 guardian authority over the ward's digital assets. If the  
17 conservatorship or guardianship is not limited, the conservator  
18 or guardian may request a custodian to suspend or terminate an  
19 account of the ward for good cause.

20 The bill imposes on a fiduciary the duties of care, loyalty,  
21 and confidentiality and specifies a fiduciary's authority with  
22 respect to digital assets of a user.

23 The bill provides that a custodian has 45 days to comply with  
24 a request under the new Code chapter. If the custodian fails  
25 to comply, the fiduciary may apply for a court order directing  
26 compliance.

27 The bill provides that a custodian and the custodian's  
28 officers, employees, and agents are immune from liability for  
29 an act or omission done in good faith in compliance with the  
30 new Code chapter.

31 The bill provides applicability provisions. The bill  
32 applies to a fiduciary acting under a will or a power of  
33 attorney executed before, on, or after the effective date of  
34 the bill. The bill applies to a personal representative acting  
35 for a decedent who dies before, on, or after the effective date

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1 of the bill. The bill applies to a conservator or guardian  
2 acting for a ward on or after the effective date of the bill.  
3 The bill applies to a trustee acting under a trust created  
4 before, on, or after the effective date of the bill.  
5 The bill makes conforming changes.