

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.