

Senate Study Bill 1086 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

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 2017, 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 2017, 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 to the designated recipient or not to disclose some
26 or all of the user's digital assets, including the content
27 of electronic communications. If the online tool allows the
28 user to modify or delete a direction at any time, a direction
29 regarding disclosure using an online tool overrides a contrary
30 direction by the user in a will, trust, power of attorney, or
31 other record.

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

1 of some or all of the user's digital assets, including the
2 content of electronic communications sent or received by the
3 user.

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

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

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

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

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

20 **Sec. 9. NEW SECTION. 638.6 Procedure for disclosing digital**
21 **assets.**

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

25 a. Grant a fiduciary or designated recipient full access to
26 the user's account.

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

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

35 2. A custodian may assess a reasonable administrative

1 charge for the cost of disclosing digital assets under this
2 chapter.

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

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

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

13 b. All of the user's digital assets to the fiduciary or
14 designated recipient.

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

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

18 Sec. 10. NEW SECTION. 638.7 Disclosure of content of
19 electronic communications of deceased user.

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

26 1. A written request for disclosure in physical or
27 electronic form.

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

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

34 4. Unless the user provided direction using an online tool,
35 a copy of the user's will, trust, power of attorney, or other

1 record evidencing the user's consent to disclosure of the
2 content of electronic communications.

3 5. If requested by the custodian, any of the following:

4 a. A number, username, address, or other unique subscriber
5 or account identifier assigned by the custodian to identify the
6 user's account.

7 b. Evidence linking the account to the user.

8 c. 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 content of electronic communications
12 of the user would not violate 18 U.S.C. §2701 et seq., 47
13 U.S.C. §222, or other applicable law.

14 (3) Unless the user provided direction using an online
15 tool, that the user consented to disclosure of the content of
16 electronic communications.

17 (4) Disclosure of the content of electronic communications
18 of the user is reasonably necessary for administration of the
19 estate.

20 Sec. 11. NEW SECTION. 638.8 Disclosure of other digital
21 assets of deceased user.

22 Unless the user prohibited disclosure of digital assets or
23 the court directs otherwise, a custodian shall disclose to the
24 personal representative of the estate of a deceased user a
25 catalogue of electronic communications sent or received by the
26 user and digital assets, other than the content of electronic
27 communications, of the user, if the personal representative
28 gives the 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 death certificate of the user.

32 3. A certified copy of the letters of appointment of the
33 personal representative, an original affidavit made pursuant
34 to section 633.356, or a file-stamped copy of the court order
35 authorizing the personal representative to administer the

1 user's estate.

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

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

6 b. Evidence linking the account to the user.

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

10 d. A finding by the court of any of the following:

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

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

15 Sec. 12. NEW SECTION. 638.9 Disclosure of content of
16 electronic communications of principal.

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

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

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

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

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

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

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

2 Sec. 13. NEW SECTION. 638.10 Disclosure of other digital
3 **assets of principal.**

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

12 1. A written request for disclosure in physical or
13 electronic form.

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

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

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

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

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

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

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

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

34 Unless otherwise ordered by the court, directed by the user,
35 or provided in a trust, a custodian shall disclose to a trustee

1 that is not an original user of an account the content of an
2 electronic communication sent or received by an original or
3 successor user and carried, maintained, processed, received,
4 or stored by the custodian in the account of the trust if the
5 trustee gives the custodian all of the following:

6 1. A written request for disclosure in physical or
7 electronic form.

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

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

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

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

19 b. Evidence linking the account to the trust.

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

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

31 1. A written request for disclosure in physical or
32 electronic form.

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

35 3. A certification by the trustee, under penalty of perjury,

1 that the trust exists and the trustee is a currently acting
2 trustee of the trust.

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

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

7 b. Evidence linking the account to the trust.

8 Sec. 17. NEW SECTION. 638.14 Disclosure of digital assets
9 to conservator or guardian of a ward.

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

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

20 a. A written request for disclosure in physical or
21 electronic form.

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

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

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

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

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

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

2 1. The legal duties imposed on a fiduciary charged with
3 managing tangible property apply to the management of digital
4 assets, including all of the following:

- 5 *a.* The duty of care.
- 6 *b.* The duty of loyalty.
- 7 *c.* The duty of confidentiality.

8 2. All of the following apply to a fiduciary's or a
9 designated recipient's authority with respect to a digital
10 asset of a user:

11 *a.* Except as otherwise provided in section 638.4, the
12 fiduciary's or designated recipient's authority is subject to
13 the applicable terms of service.

14 *b.* The fiduciary's or designated recipient's authority is
15 subject to other applicable law, including copyright law.

16 *c.* In the case of a fiduciary, the fiduciary's authority is
17 limited by the scope of the fiduciary's duties.

18 *d.* The fiduciary's or designated recipient's authority shall
19 not be used to impersonate the user.

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

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

30 5. A fiduciary with authority over the tangible, personal
31 property of a decedent, ward, principal, or settlor possesses
32 all of the following authority:

33 *a.* Has the right to access the property and any digital
34 asset stored in the property.

35 *b.* Is an authorized user for the purpose of computer-fraud

1 and unauthorized-computer-access laws, including section
2 716.6B.

3 6. A custodian may disclose information in an account to
4 a fiduciary of the user when the information is required to
5 terminate an account used to access digital assets licensed to
6 the user.

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

11 a. If the user is deceased, a certified copy of the death
12 certificate of the user.

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

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

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

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

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

28 **Sec. 19. NEW SECTION. 638.16 Custodian compliance and**
29 **immunity.**

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

1 an order directing compliance.

2 2. An order under subsection 1 directing compliance must
3 contain a finding that compliance is not in violation of 18
4 U.S.C. §2702.

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

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

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

17 a. That the account belongs to the user.

18 b. That there is sufficient consent from the user to support
19 the requested disclosure.

20 c. Any specific factual finding required by any applicable
21 law other than this chapter.

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

25 **Sec. 20. NEW SECTION. 638.17 Uniformity of application and**
26 **construction.**

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

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

34 This chapter modifies, limits, or supersedes the federal
35 Electronic Signatures in Global and National Commerce Act, 15

1 U.S.C. §7001 et seq., but does not modify, limit, or supersede
2 section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize
3 electronic delivery of any of the notices described in section
4 103(b) of that Act, 15 U.S.C. §7003(b).

5 EXPLANATION

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

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

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

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

32 The bill provides that a custodian shall disclose the
33 electronic communications of a deceased user to the personal
34 representative of the estate if the personal representative
35 provides the custodian a written request for disclosure,

1 a certified copy of the death certificate, letters of
2 appointment, and documentation evidencing the user's consent
3 to disclosure of the content of electronic communications,
4 unless the user provided such direction in an online
5 tool. A custodian shall disclose other digital assets of a
6 deceased user to the personal representative if the personal
7 representative provides a written request for disclosure,
8 a certified copy of the death certificate, and letters of
9 appointment.

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

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

1 that includes consent to disclose the content of electronic
2 communications to the trustee, and a certification by the
3 trustee that the trust exists and the trustee is a currently
4 acting trustee. A custodian shall disclose to a trustee
5 digital assets in which the trust has an interest and that
6 are not electronic communications if the trustee gives the
7 custodian a written request, a certified copy of the trust
8 instrument or certification, and a certification by the trustee
9 that the trust exists and the trustee is a currently acting
10 trustee.

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

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

27 The bill provides that a custodian has 60 days to comply with
28 a request under the new Code chapter. If the custodian fails
29 to comply, the fiduciary may apply for a court order directing
30 compliance.

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

35 The bill provides applicability provisions. The bill

1 applies to a fiduciary acting under a will or a power of
2 attorney executed before, on, or after the effective date of
3 the bill. The bill applies to a personal representative acting
4 for a decedent who dies before, on, or after the effective date
5 of the bill. The bill applies to a conservator or guardian
6 acting for a ward on or after the effective date of the bill.
7 The bill applies to a trustee acting under a trust created
8 before, on, or after the effective date of the bill.
9 The bill makes conforming changes.