

9910--A

Cal. No. 717

I N A S S E M B L Y

April 26, 2016

Introduced by M. of A. WEINSTEIN, TITONE, CRESPO, GOTTFRIED, SCHIMMING-
ER, WEPRIN -- Multi-Sponsored by -- M. of A. ABINANTI, CYMBROWITZ,
FARRELL, GALEF, GLICK, JAFFEE, MARKEY, MILLER, MORELLE, PAULIN,
PEOPLES-STOKES, ROSENTHAL, SKARTADOS, STIRPE -- (at request of the
Office of Court Administration) -- read once and referred to the
Committee on Judiciary -- reported and referred to the Committee on
Codes -- reported from committee, advanced to a third reading, amended
and ordered reprinted, retaining its place on the order of third read-
ing

AN ACT to amend the estates, powers and trusts law, in relation to the
administration of digital assets

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The estates, powers and trusts law is amended by adding a
2 new article 13-A to read as follows:

3 ARTICLE 13-A

4 ADMINISTRATION OF DIGITAL ASSETS

5 SUMMARY OF ARTICLE

6 PART 1. DEFINITIONS

7 SECTION 13-A-1 DEFINITIONS.

8 PART 2. APPLICABILITY, PROCEDURE FOR DISCLOSURE, USER DIRECTIONS

9 SECTION 13-A-2.1 APPLICABILITY.

10 13-A-2.2 USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.

11 13-A-2.3 TERMS-OF-SERVICE AGREEMENT.

12 13-A-2.4 PROCEDURE FOR DISCLOSING DIGITAL ASSETS.

13 PART 3. DISCLOSURE OF DIGITAL ASSETS TO FIDUCIARY

14 SECTION 13-A-3.1 DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF
15 DECEASED USER.

16 13-A-3.2 DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED USER.

17 13-A-3.3 DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF
18 PRINCIPAL.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD14544-02-6

- 1 13-A-3.4 DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL.
- 2 13-A-3.5 DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE
- 3 IS ORIGINAL USER.
- 4 13-A-3.6 DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS
- 5 HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER.
- 6 13-A-3.7 DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN
- 7 TRUSTEE NOT ORIGINAL USER.
- 8 13-A-3.8 DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN OF WARD.

9 PART 4. FIDUCIARY DUTY AND AUTHORITY, COMPLIANCE AND IMMUNITY
 10 SECTION 13-A-4.1 FIDUCIARY DUTY AND AUTHORITY.
 11 13-A-4.2 CUSTODIAN COMPLIANCE AND IMMUNITY.

12 PART 5. MISCELLANEOUS PROVISIONS
 13 SECTION 13-A-5.1 RELATION TO ELECTRONIC SIGNATURE IN GLOBAL AND NATIONAL
 14 COMMERCE ACT.
 15 13-A-5.2 SEVERABILITY.

16 PART 1. DEFINITIONS

17 S 13-A-1 DEFINITIONS

18 IN THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

19 (A) "ACCOUNT" MEANS AN ARRANGEMENT UNDER A TERMS-OF-SERVICE AGREEMENT
 20 IN WHICH A CUSTODIAN CARRIES, MAINTAINS, PROCESSES, RECEIVES, OR STORES
 21 A DIGITAL ASSET OF THE USER OR PROVIDES GOODS OR SERVICES TO THE USER.

22 (B) "AGENT" MEANS A PERSON GRANTED AUTHORITY TO ACT AS
 23 ATTORNEY-IN-FACT FOR THE PRINCIPAL UNDER A POWER OF ATTORNEY AND
 24 INCLUDES THE ORIGINAL AGENT OR ANY CO-AGENT OR SUCCESSOR AGENT.

25 (C) "CARRIES" MEANS ENGAGES IN THE TRANSMISSION OF AN ELECTRONIC
 26 COMMUNICATION.

27 (D) "CATALOGUE OF ELECTRONIC COMMUNICATIONS" MEANS INFORMATION THAT
 28 IDENTIFIES EACH PERSON WITH WHICH A USER HAS HAD AN ELECTRONIC COMMUNI-
 29 CATION, THE TIME AND DATE OF THE COMMUNICATION, AND THE ELECTRONIC
 30 ADDRESS OF THE PERSON.

31 (E) "CONTENT OF AN ELECTRONIC COMMUNICATION" MEANS INFORMATION
 32 CONCERNING THE SUBSTANCE OR MEANING OF THE COMMUNICATION WHICH:

33 (1) HAS BEEN SENT OR RECEIVED BY A USER;

34 (2) IS IN ELECTRONIC STORAGE BY A CUSTODIAN PROVIDING AN
 35 ELECTRONIC-COMMUNICATION SERVICE TO THE PUBLIC OR IS CARRIED OR MAIN-
 36 TAINED BY A CUSTODIAN PROVIDING A REMOTE-COMPUTING SERVICE TO THE
 37 PUBLIC; AND

38 (3) IS NOT READILY ACCESSIBLE TO THE PUBLIC.

39 (F) "COURT" MEANS THE COURT IN THIS STATE HAVING JURISDICTION IN
 40 MATTERS RELATING TO THE CONTENT OF THIS ARTICLE.

41 (G) "CUSTODIAN" MEANS A PERSON THAT CARRIES, MAINTAINS, PROCESSES,
 42 RECEIVES, OR STORES A DIGITAL ASSET OF A USER.

43 (H) "DESIGNATED RECIPIENT" MEANS A PERSON CHOSEN BY A USER USING AN
 44 ONLINE TOOL TO ADMINISTER DIGITAL ASSETS OF THE USER.

45 (I) "DIGITAL ASSET" MEANS AN ELECTRONIC RECORD IN WHICH AN INDIVIDUAL
 46 HAS A RIGHT OR INTEREST. THE TERM DOES NOT INCLUDE AN UNDERLYING ASSET
 47 OR LIABILITY UNLESS THE ASSET OR LIABILITY IS ITSELF AN ELECTRONIC
 48 RECORD.

49 (J) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL,
 50 DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPA-
 51 BILITIES.

52 (K) "ELECTRONIC COMMUNICATION" HAS THE MEANING SET FORTH IN 18 U.S.C.
 53 SECTION 2510(12), AS AMENDED.

- 1 (L) "ELECTRONIC-COMMUNICATION SERVICE" MEANS A CUSTODIAN THAT PROVIDES
2 TO A USER THE ABILITY TO SEND OR RECEIVE AN ELECTRONIC COMMUNICATION.
- 3 (M) "FIDUCIARY" INCLUDES AN EXECUTOR, PRELIMINARY EXECUTOR, ADMINIS-
4 TRATOR, TEMPORARY ADMINISTRATOR, VOLUNTARY ADMINISTRATOR, PERSONAL
5 REPRESENTATIVE, GUARDIAN, AGENT, OR TRUSTEE. THIS TERM INCLUDES THE
6 SUCCESSOR TO ANY FIDUCIARY.
- 7 (N) "GUARDIAN" MEANS A PERSON WHO HAS BEEN APPOINTED AS A GUARDIAN BY
8 A COURT OF THIS STATE PURSUANT TO THE SURROGATE'S COURT PROCEDURE ACT OR
9 THE MENTAL HYGIENE LAW.
- 10 (O) "INFORMATION" MEANS DATA, METADATA, INTERNET PROTOCOL ADDRESS,
11 USER LOGIN INFORMATION, TEXT, IMAGES, VIDEOS, SOUNDS, CODES, COMPUTER
12 PROGRAMS, SOFTWARE, DATABASES, OR SIMILAR INTELLIGENCE OF ANY NATURE.
- 13 (P) "ONLINE TOOL" MEANS AN ELECTRONIC SERVICE PROVIDED BY A CUSTODIAN
14 THAT ALLOWS THE USER, IN AN AGREEMENT DISTINCT FROM THE TERMS-OF-SERVICE
15 AGREEMENT BETWEEN THE CUSTODIAN AND USER, TO PROVIDE DIRECTIONS FOR
16 DISCLOSURE OR NONDISCLOSURE OF DIGITAL ASSETS TO A THIRD PERSON.
- 17 (Q) "PERSON" MEANS A NATURAL PERSON, CORPORATION, BUSINESS TRUST,
18 ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION,
19 JOINT VENTURE, BUSINESS OR NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERN-
20 MENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
21 LEGAL OR COMMERCIAL ENTITY, BOARD AND THE STATE.
- 22 (R) "POWER OF ATTORNEY" MEANS A RECORD THAT GRANTS AN AGENT AUTHORITY
23 TO ACT IN THE PLACE OF A PRINCIPAL.
- 24 (S) "PRINCIPAL" MEANS AN INDIVIDUAL WHO GRANTS AUTHORITY TO AN AGENT
25 IN A POWER OF ATTORNEY.
- 26 (T) "PROTECTIVE ORDER" MEANS AN ORDER APPOINTING A GUARDIAN OR ANOTHER
27 ORDER RELATED TO MANAGEMENT OF A WARD'S PROPERTY.
- 28 (U) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM
29 OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN
30 PERCEIVABLE FORM.
- 31 (V) "REMOTE-COMPUTING SERVICE" MEANS A CUSTODIAN THAT PROVIDES TO A
32 USER COMPUTER-PROCESSING SERVICES OR THE STORAGE OF DIGITAL ASSETS BY
33 MEANS OF AN ELECTRONIC COMMUNICATIONS SYSTEM, AS DEFINED IN 18 U.S.C.
34 SECTION 2510(14), AS AMENDED.
- 35 (W) "TERMS-OF-SERVICE AGREEMENT" MEANS AN AGREEMENT THAT CONTROLS THE
36 RELATIONSHIP BETWEEN A USER AND A CUSTODIAN.
- 37 (X) "TRUSTEE" INCLUDES AN ORIGINAL ADDITIONAL. AND SUCCESSOR TRUSTEE,
38 AND A CO-TRUSTEE.
- 39 (Y) "USER" MEANS A PERSON THAT HAS AN ACCOUNT WITH A CUSTODIAN.
- 40 (Z) "WARD" MEANS AN INDIVIDUAL FOR WHOM A GUARDIAN HAS BEEN APPOINTED
41 BY A COURT OF THIS STATE PURSUANT TO THE SURROGATE'S COURT PROCEDURE ACT
42 OR THE MENTAL HYGIENE LAW. THE TERM INCLUDES AN INDIVIDUAL FOR WHOM AN
43 APPLICATION OF GUARDIANSHIP IS PENDING.

44 PART 2. APPLICABILITY; PROCEDURE FOR DISCLOSURE; USER DIRECTIONS

45 S 13-A-2.1 APPLICABILITY

46 (A) THIS ARTICLE APPLIES TO:

47 (1) A FIDUCIARY ACTING UNDER A WILL, TRUST OR POWER OF ATTORNEY
48 EXECUTED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE;

49 (2) AN EXECUTOR, ADMINISTRATOR OR PERSONAL REPRESENTATIVE ACTING FOR A
50 DECEDENT WHO DIED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS ARTI-
51 CLE;

52 (3) A GUARDIANSHIP PROCEEDING COMMENCED BEFORE, ON, OR AFTER THE
53 EFFECTIVE DATE OF THIS ARTICLE; AND

1 (4) A TRUSTEE ACTING UNDER A TRUST CREATED BEFORE, ON, OR AFTER THE
2 EFFECTIVE DATE OF THIS ARTICLE.

3 (B) THIS ARTICLE APPLIES TO A CUSTODIAN IF THE USER RESIDES IN THIS
4 STATE OR RESIDED IN THIS STATE AT THE TIME OF THE USER'S DEATH.

5 (C) THIS ARTICLE DOES NOT APPLY TO A DIGITAL ASSET OF AN EMPLOYER USED
6 BY AN EMPLOYEE IN THE ORDINARY COURSE OF THE EMPLOYER'S BUSINESS.

7 S 13-A-2.2 USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS

8 (A) A USER MAY USE AN ONLINE TOOL TO DIRECT THE CUSTODIAN TO DISCLOSE
9 TO A DESIGNATED RECIPIENT OR NOT TO DISCLOSE SOME OR ALL OF THE USER'S
10 DIGITAL ASSETS, INCLUDING THE CONTENT OF ELECTRONIC COMMUNICATIONS. IF
11 THE ONLINE TOOL ALLOWS THE USER TO MODIFY OR DELETE A DIRECTION AT ALL
12 TIMES, A DIRECTION REGARDING DISCLOSURE USING AN ONLINE TOOL OVERRIDES A
13 CONTRARY DIRECTION BY THE USER IN A WILL, TRUST, POWER OF ATTORNEY, OR
14 OTHER RECORD.

15 (B) IF A USER HAS NOT USED AN ONLINE TOOL TO GIVE DIRECTION UNDER
16 PARAGRAPH (A) OR IF THE CUSTODIAN HAS NOT PROVIDED AN ONLINE TOOL, THE
17 USER MAY ALLOW OR PROHIBIT IN A WILL, TRUST, POWER OF ATTORNEY, OR OTHER
18 RECORD, DISCLOSURE TO A FIDUCIARY OF SOME OR ALL OF THE USER'S DIGITAL
19 ASSETS, INCLUDING THE CONTENT OF ELECTRONIC COMMUNICATIONS SENT OR
20 RECEIVED BY THE USER.

21 (C) A USER'S DIRECTION UNDER PARAGRAPH (A) OR (B) OVERRIDES A CONTRARY
22 PROVISION IN A TERMS-OF-SERVICE AGREEMENT THAT DOES NOT REQUIRE THE USER
23 TO ACT AFFIRMATIVELY AND DISTINCTLY FROM THE USER'S ASSENT TO THE TERMS
24 OF SERVICE.

25 S 13-A-2.3 TERMS-OF-SERVICE AGREEMENT

26 (A) THIS ARTICLE DOES NOT CHANGE OR IMPAIR A RIGHT OF A CUSTODIAN OR A
27 USER UNDER A TERMS-OF-SERVICE AGREEMENT TO ACCESS AND USE DIGITAL ASSETS
28 OF THE USER.

29 (B) THIS ARTICLE DOES NOT GIVE A FIDUCIARY OR A DESIGNATED RECIPIENT
30 ANY NEW OR EXPANDED RIGHTS OTHER THAN THOSE HELD BY THE USER FOR WHOM,
31 OR FOR WHOSE ESTATE, THE FIDUCIARY OR DESIGNATED RECIPIENT ACTS OR
32 REPRESENTS.

33 (C) A FIDUCIARY'S OR DESIGNATED RECIPIENT'S ACCESS TO DIGITAL ASSETS
34 MAY BE MODIFIED OR ELIMINATED BY A USER, BY FEDERAL LAW, OR BY A TERMS-
35 OF-SERVICE AGREEMENT IF THE USER HAS NOT PROVIDED DIRECTION UNDER
36 SECTION 13-A-2.2.

37 S 13-A-2.4 PROCEDURE FOR DISCLOSING DIGITAL ASSETS

38 (A) WHEN DISCLOSING DIGITAL ASSETS OF A USER UNDER THIS ARTICLE, THE
39 CUSTODIAN MAY AT ITS SOLE DISCRETION:

40 (1) GRANT A FIDUCIARY OR DESIGNATED RECIPIENT FULL ACCESS TO THE
41 USER'S ACCOUNT;

42 (2) GRANT A FIDUCIARY OR DESIGNATED RECIPIENT PARTIAL ACCESS TO THE
43 USER'S ACCOUNT SUFFICIENT TO PERFORM THE TASKS WITH WHICH THE FIDUCIARY
44 OR DESIGNATED RECIPIENT IS CHARGED; OR

45 (3) PROVIDE A FIDUCIARY OR DESIGNATED RECIPIENT A COPY IN A RECORD OF
46 ANY DIGITAL ASSET THAT, ON THE DATE THE CUSTODIAN RECEIVED THE REQUEST
47 FOR DISCLOSURE, THE USER COULD HAVE ACCESSED IF THE USER WERE ALIVE AND
48 HAD FULL CAPACITY AND ACCESS TO THE ACCOUNT.

49 (B) A CUSTODIAN MAY ASSESS A REASONABLE ADMINISTRATIVE CHARGE FOR THE
50 COST OF DISCLOSING DIGITAL ASSETS UNDER THIS ARTICLE.

51 (C) A CUSTODIAN NEED NOT DISCLOSE UNDER THIS ARTICLE A DIGITAL ASSET
52 DELETED BY A USER.

53 (D) IF A USER DIRECTS OR A FIDUCIARY REQUESTS A CUSTODIAN TO DISCLOSE
54 UNDER THIS ARTICLE SOME, BUT NOT ALL, OF THE USER'S DIGITAL ASSETS, THE
55 CUSTODIAN NEED NOT DISCLOSE THE ASSETS IF SEGREGATION OF THE ASSETS
56 WOULD IMPOSE AN UNDUE BURDEN ON THE CUSTODIAN. IF THE CUSTODIAN BELIEVES

1 THE DIRECTION OR REQUEST IMPOSES AN UNDUE BURDEN, THE CUSTODIAN OR FIDU-
2 CIARY MAY SEEK AN ORDER FROM THE COURT TO DISCLOSE:

- 3 (1) A SUBSET LIMITED BY DATE OF THE USER'S DIGITAL ASSETS;
- 4 (2) ALL OF THE USER'S DIGITAL ASSETS TO THE FIDUCIARY OR DESIGNATED
5 RECIPIENT;
- 6 (3) NONE OF THE USER'S DIGITAL ASSETS; OR
- 7 (4) ALL OF THE USER'S DIGITAL ASSETS TO THE COURT FOR REVIEW IN
8 CAMERA.

9 PART 3. DISCLOSURE OF DIGITAL ASSETS TO FIDUCIARY

10 S 13-A-3.1 DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF
11 DECEASED USER

12 IF A DECEASED USER CONSENTED OR A COURT DIRECTS DISCLOSURE OF THE
13 CONTENTS OF ELECTRONIC COMMUNICATIONS OF THE USER, THE CUSTODIAN SHALL
14 DISCLOSE TO THE EXECUTOR, ADMINISTRATOR OR PERSONAL REPRESENTATIVE OF
15 THE ESTATE OF THE USER THE CONTENT OF AN ELECTRONIC COMMUNICATION SENT
16 OR RECEIVED BY THE USER IF THE EXECUTOR, ADMINISTRATOR OR REPRESENTATIVE
17 GIVES THE CUSTODIAN:

- 18 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
- 19 (B) A COPY OF THE DEATH CERTIFICATE OF THE USER;
- 20 (C) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE EXECUTOR,
21 ADMINISTRATOR, OR PERSONAL REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR
22 COURT ORDER;

23 (D) UNLESS THE USER PROVIDED DIRECTION USING AN ONLINE TOOL, A COPY OF
24 THE USER'S WILL, TRUST, OR OTHER RECORD EVIDENCING THE USER'S CONSENT TO
25 DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS; AND

26 (E) IF REQUESTED BY THE CUSTODIAN:

- 27 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
28 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE USER'S ACCOUNT;
- 29 (2) EVIDENCE LINKING THE ACCOUNT TO THE USER; OR
- 30 (3) A FINDING BY THE COURT THAT:

31 (A) THE USER HAD A SPECIFIC ACCOUNT WITH THE CUSTODIAN, IDENTIFIABLE
32 BY THE INFORMATION SPECIFIED IN SUBPARAGRAPH (1);

33 (B) DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS OF THE USER
34 WOULD NOT VIOLATE 18 U.S.C. SECTION 2701 ET SEQ., AS AMENDED, 47 U.S.C.
35 SECTION 222, AS AMENDED, OR OTHER APPLICABLE LAW;

36 (C) UNLESS THE USER PROVIDED DIRECTION USING AN ONLINE TOOL, THE USER
37 CONSENTED TO DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS; OR

38 (D) DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS OF THE USER
39 IS REASONABLY NECESSARY FOR ADMINISTRATION OF THE ESTATE.

40 S 13-A-3.2 DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED USER

41 UNLESS THE USER PROHIBITED DISCLOSURE OF DIGITAL ASSETS OR THE COURT
42 DIRECTS OTHERWISE, A CUSTODIAN SHALL DISCLOSE TO THE EXECUTOR, ADMINIS-
43 TRATOR OR PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED USER A
44 CATALOGUE OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY THE USER AND
45 DIGITAL ASSETS, OTHER THAN THE CONTENT OF ELECTRONIC COMMUNICATIONS, OF
46 THE USER, IF THE EXECUTOR, ADMINISTRATOR OR PERSONAL REPRESENTATIVE
47 GIVES THE CUSTODIAN:

- 48 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
- 49 (B) A COPY OF THE DEATH CERTIFICATE OF THE USER;
- 50 (C) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE EXECUTOR,
51 ADMINISTRATOR, OR PERSONAL REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR
52 COURT ORDER; AND
- 53 (D) IF REQUESTED BY THE CUSTODIAN:

1 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
2 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE USER'S ACCOUNT;

3 (2) EVIDENCE LINKING THE ACCOUNT TO THE USER;

4 (3) AN AFFIDAVIT STATING THAT DISCLOSURE OF THE USER'S DIGITAL ASSETS
5 IS REASONABLY NECESSARY FOR ADMINISTRATION OF THE ESTATE; OR

6 (4) A FINDING BY THE COURT THAT:

7 (A) THE USER HAD A SPECIFIC ACCOUNT WITH THE CUSTODIAN, IDENTIFIABLE
8 BY THE INFORMATION SPECIFIED IN SUBPARAGRAPH (1); OR

9 (B) DISCLOSURE OF THE USER'S DIGITAL ASSETS IS REASONABLY NECESSARY
10 FOR ADMINISTRATION OF THE ESTATE.

11 S 13-A-3.3 DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF PRINCI-
12 PAL

13 TO THE EXTENT A POWER OF ATTORNEY EXPRESSLY GRANTS AN AGENT AUTHORITY
14 OVER THE CONTENT OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY THE
15 PRINCIPAL AND UNLESS DIRECTED OTHERWISE BY THE PRINCIPAL OR THE COURT, A
16 CUSTODIAN SHALL DISCLOSE TO THE AGENT THE CONTENT IF THE AGENT GIVES THE
17 CUSTODIAN:

18 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;

19 (B) A COPY OF THE POWER OF ATTORNEY EXPRESSLY GRANTING THE AGENT
20 AUTHORITY OVER THE CONTENT OF ELECTRONIC COMMUNICATIONS OF THE PRINCI-
21 PAL;

22 (C) AN AFFIDAVIT IN WHICH THE AFFIANT ATTESTS THAT THE COPY IS AN
23 ACCURATE COPY OF THE ORIGINAL POWER OF ATTORNEY AND THAT, TO THE BEST OF
24 THE AFFIANT'S KNOWLEDGE, THE POWER REMAINS IN EFFECT; AND

25 (D) IF REQUESTED BY THE CUSTODIAN:

26 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
27 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE PRINCIPAL'S
28 ACCOUNT; OR

29 (2) EVIDENCE LINKING THE ACCOUNT TO THE PRINCIPAL.

30 S 13-A-3.4 DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL

31 UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE PRINCIPAL, OR
32 PROVIDED BY A POWER OF ATTORNEY, A CUSTODIAN SHALL DISCLOSE TO AN AGENT
33 WITH SPECIFIC AUTHORITY OVER DIGITAL ASSETS OR GENERAL AUTHORITY TO ACT
34 ON BEHALF OF A PRINCIPAL A CATALOGUE OF ELECTRONIC COMMUNICATIONS SENT
35 OR RECEIVED BY THE PRINCIPAL AND DIGITAL ASSETS, OTHER THAN THE CONTENT
36 OF ELECTRONIC COMMUNICATIONS, OF THE PRINCIPAL IF THE AGENT GIVES THE
37 CUSTODIAN:

38 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;

39 (B) A COPY OF THE POWER OF ATTORNEY THAT GIVES THE AGENT SPECIFIC
40 AUTHORITY OVER DIGITAL ASSETS OR GENERAL AUTHORITY TO ACT ON BEHALF OF
41 THE PRINCIPAL;

42 (C) AN AFFIDAVIT IN WHICH THE AFFIANT ATTESTS THAT THE COPY IS AN
43 ACCURATE COPY OF THE ORIGINAL POWER OF ATTORNEY AND THAT, TO THE BEST OF
44 THE AFFIANT'S KNOWLEDGE, THE POWER REMAINS IN EFFECT; AND

45 (D) IF REQUESTED BY THE CUSTODIAN:

46 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
47 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE PRINCIPAL'S
48 ACCOUNT; OR

49 (2) EVIDENCE LINKING THE ACCOUNT TO THE PRINCIPAL.

50 S 13-A-3.5 DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS
51 ORIGINAL USER

52 UNLESS OTHERWISE ORDERED BY THE COURT OR PROVIDED IN A TRUST, A CUSTO-
53 DIAN SHALL DISCLOSE TO A TRUSTEE THAT IS AN ORIGINAL USER OF AN ACCOUNT
54 ANY DIGITAL ASSET OF THE ACCOUNT HELD IN TRUST, INCLUDING A CATALOGUE OF
55 ELECTRONIC COMMUNICATIONS OF THE TRUSTEE AND THE CONTENT OF ELECTRONIC
56 COMMUNICATIONS.

1 S 13-A-3.6 DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD IN
2 TRUST WHEN TRUSTEE NOT ORIGINAL USER
3 UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE USER, OR
4 PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE TO A TRUSTEE THAT IS NOT
5 AN ORIGINAL USER OF AN ACCOUNT THE CONTENT OF AN ELECTRONIC COMMUNI-
6 CATION SENT OR RECEIVED BY AN ORIGINAL OR SUCCESSOR USER AND CARRIED,
7 MAINTAINED, PROCESSED, RECEIVED, OR STORED BY THE CUSTODIAN IN THE
8 ACCOUNT OF THE TRUST IF THE TRUSTEE GIVES THE CUSTODIAN:
9 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
10 (B) A COPY OF THE TRUST INSTRUMENT THAT INCLUDES CONSENT TO DISCLOSURE
11 OF THE CONTENT OF ELECTRONIC COMMUNICATIONS TO THE TRUSTEE;
12 (C) A CERTIFICATION BY THE TRUSTEE, UNDER PENALTY OF PERJURY, THAT THE
13 TRUST EXISTS AND THE TRUSTEE IS A CURRENTLY ACTING TRUSTEE OF THE TRUST;
14 AND
15 (D) IF REQUESTED BY THE CUSTODIAN:
16 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
17 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE TRUST'S ACCOUNT; OR
18 (2) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

19 S 13-A-3.7 DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE
20 NOT ORIGINAL USER
21 UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE USER, OR
22 PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE, TO A TRUSTEE THAT IS
23 NOT AN ORIGINAL USER OF AN ACCOUNT, A CATALOGUE OF ELECTRONIC COMMUNI-
24 CATIONS SENT OR RECEIVED BY AN ORIGINAL OR SUCCESSOR USER AND STORED,
25 CARRIED, OR MAINTAINED BY THE CUSTODIAN IN AN ACCOUNT OF THE TRUST AND
26 ANY DIGITAL ASSETS, OTHER THAN THE CONTENT OF ELECTRONIC COMMUNICATIONS,
27 IN WHICH THE TRUST HAS A RIGHT OR INTEREST IF THE TRUSTEE GIVES THE
28 CUSTODIAN:
29 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
30 (B) A COPY OF THE TRUST INSTRUMENT;
31 (C) A CERTIFICATION BY THE TRUSTEE, UNDER PENALTY OF PERJURY, THAT THE
32 TRUST EXISTS AND THE TRUSTEE IS A CURRENTLY ACTING TRUSTEE OF THE TRUST;
33 AND
34 (D) IF REQUESTED BY THE CUSTODIAN:
35 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
36 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE TRUST'S ACCOUNT; OR
37 (2) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

38 S 13-A-3.8 DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN OF WARD
39 (A) AFTER AN OPPORTUNITY FOR A HEARING CONCERNING THE APPOINTMENT OR
40 AUTHORITY OF A GUARDIAN, THE COURT MAY GRANT A GUARDIAN ACCESS TO THE
41 DIGITAL ASSETS OF A WARD.
42 (B) UNLESS OTHERWISE ORDERED BY THE COURT OR DIRECTED BY THE USER, A
43 CUSTODIAN SHALL DISCLOSE TO A GUARDIAN THE CATALOGUE OF ELECTRONIC
44 COMMUNICATIONS SENT OR RECEIVED BY A WARD AND ANY DIGITAL ASSETS, OTHER
45 THAN THE CONTENT OF ELECTRONIC COMMUNICATIONS, IN WHICH THE WARD HAS A
46 RIGHT OR INTEREST IF THE WARD GIVES THE CUSTODIAN:
47 (1) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
48 (2) A CERTIFIED COPY OF THE COURT ORDER THAT GIVES THE GUARDIAN
49 AUTHORITY OVER THE DIGITAL ASSETS OF THE WARD; AND
50 (3) IF REQUESTED BY THE CUSTODIAN:
51 (A) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
52 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE ACCOUNT OF THE
53 WARD; OR
54 (B) EVIDENCE LINKING THE ACCOUNT TO THE WARD.
55 (C) A GUARDIAN WITH GENERAL AUTHORITY TO MANAGE THE ASSETS OF A WARD
56 MAY REQUEST A CUSTODIAN OF THE DIGITAL ASSETS OF THE WARD TO SUSPEND OR

1 TERMINATE AN ACCOUNT OF THE WARD FOR GOOD CAUSE. A REQUEST MADE UNDER
2 THIS SECTION MUST BE ACCOMPANIED BY A CERTIFIED COPY OF THE COURT ORDER
3 GIVING THE GUARDIAN AUTHORITY OVER THE WARD'S PROPERTY.

4 PART 4. FIDUCIARY DUTY AND AUTHORITY, COMPLIANCE AND IMMUNITY

5 S 13-A-4.1 FIDUCIARY DUTY AND AUTHORITY

6 (A) THE LEGAL DUTIES IMPOSED ON A FIDUCIARY CHARGED WITH MANAGING
7 TANGIBLE PROPERTY APPLY TO THE MANAGEMENT OF DIGITAL ASSETS, INCLUDING:

- 8 (1) THE DUTY OF CARE;
9 (2) THE DUTY OF LOYALTY; AND
10 (3) THE DUTY OF CONFIDENTIALITY.

11 (B) A FIDUCIARY'S OR DESIGNATED RECIPIENT'S AUTHORITY WITH RESPECT TO
12 A DIGITAL ASSET OF A USER:

13 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 13-A-2.2, IS SUBJECT TO
14 THE APPLICABLE TERMS OF SERVICE;

15 (2) IS SUBJECT TO OTHER APPLICABLE LAW, INCLUDING COPYRIGHT LAW;

16 (3) IN THE CASE OF A FIDUCIARY, IS LIMITED BY THE SCOPE OF THE
17 FIDUCIARY'S DUTIES; AND

18 (4) MAY NOT BE USED TO IMPERSONATE THE USER.

19 (C) A FIDUCIARY WITH AUTHORITY OVER THE PROPERTY OF A DECEDENT, WARD,
20 PRINCIPAL, OR SETTLOR HAS THE RIGHT TO ACCESS ANY DIGITAL ASSET IN WHICH
21 THE DECEDENT, WARD, PRINCIPAL, OR SETTLOR HAD A RIGHT OR INTEREST AND
22 THAT IS NOT HELD BY A CUSTODIAN OR SUBJECT TO A TERMS-OF-SERVICE AGREE-
23 MENT.

24 (D) A FIDUCIARY ACTING WITHIN THE SCOPE OF THE FIDUCIARY'S DUTIES IS
25 AN AUTHORIZED USER OF THE PROPERTY OF THE DECEDENT, WARD, PRINCIPAL, OR
26 SETTLOR FOR THE PURPOSE OF APPLICABLE COMPUTER-FRAUD AND
27 UNAUTHORIZED-COMPUTER-ACCESS LAWS, INCLUDING THIS STATE'S LAW ON UNAU-
28 THORIZED COMPUTER ACCESS.

29 (E) A FIDUCIARY WITH AUTHORITY OVER THE TANGIBLE, PERSONAL PROPERTY OF
30 A DECEDENT, WARD, PRINCIPAL, OR SETTLOR;

31 (1) HAS THE RIGHT TO ACCESS THE PROPERTY AND ANY DIGITAL ASSET STORED
32 IN IT; AND

33 (2) IS AN AUTHORIZED USER FOR THE PURPOSE OF COMPUTER-FRAUD AND UNAU-
34 THORIZED-COMPUTER-ACCESS LAWS, INCLUDING THIS STATE'S LAW ON UNAUTHOR-
35 IZED COMPUTER ACCESS.

36 (F) A CUSTODIAN MAY DISCLOSE INFORMATION IN AN ACCOUNT TO A FIDUCIARY
37 OF THE USER WHEN THE INFORMATION IS REQUIRED TO TERMINATE AN ACCOUNT
38 USED TO ACCESS DIGITAL ASSETS LICENSED TO THE USER.

39 (G) A FIDUCIARY OF A USER MAY REQUEST A CUSTODIAN TO TERMINATE THE
40 USER'S ACCOUNT. A REQUEST FOR TERMINATION MUST BE IN WRITING, IN EITHER
41 PHYSICAL OR ELECTRONIC FORM, AND ACCOMPANIED BY:

42 (1) IF THE USER IS DECEASED, A COPY OF THE DEATH CERTIFICATE OF THE
43 USER;

44 (2) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE EXECUTOR,
45 ADMINISTRATOR, OR PERSONAL REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR
46 COURT ORDER, POWER OF ATTORNEY, OR TRUST GIVING THE FIDUCIARY AUTHORITY
47 OVER THE ACCOUNT; AND

48 (3) IF REQUESTED BY THE CUSTODIAN:

49 (A) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
50 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE USER'S ACCOUNT;

51 (B) EVIDENCE LINKING THE ACCOUNT TO THE USER; OR

52 (C) A FINDING BY THE COURT THAT THE USER HAD A SPECIFIC ACCOUNT WITH
53 THE CUSTODIAN, IDENTIFIABLE BY THE INFORMATION SPECIFIED IN ITEM (A).

54 S 13-A-4.2 CUSTODIAN COMPLIANCE AND IMMUNITY

1 (A) NOT LATER THAN SIXTY DAYS AFTER RECEIPT OF THE INFORMATION
2 REQUIRED UNDER SECTIONS 13-A-3.1 THROUGH 13-A-4.1, A CUSTODIAN SHALL
3 COMPLY WITH A REQUEST UNDER THIS ARTICLE FROM A FIDUCIARY OR DESIGNATED
4 RECIPIENT TO DISCLOSE DIGITAL ASSETS OR TERMINATE AN ACCOUNT. IF THE
5 CUSTODIAN FAILS TO COMPLY, THE FIDUCIARY OR DESIGNATED RECIPIENT MAY
6 APPLY TO THE COURT FOR AN ORDER DIRECTING COMPLIANCE.

7 (B) AN ORDER UNDER PARAGRAPH (A) DIRECTING COMPLIANCE MUST CONTAIN A
8 FINDING THAT COMPLIANCE IS NOT IN VIOLATION OF 18 U.S.C. SECTION 2702,
9 AS AMENDED.

10 (C) A CUSTODIAN MAY NOTIFY THE USER THAT A REQUEST FOR DISCLOSURE OR
11 TO TERMINATE AN ACCOUNT WAS MADE UNDER THIS ARTICLE.

12 (D) A CUSTODIAN MAY DENY A REQUEST UNDER THIS ARTICLE FROM A FIDUCIARY
13 OR DESIGNATED RECIPIENT FOR DISCLOSURE OF DIGITAL ASSETS OR TO TERMINATE
14 AN ACCOUNT IF THE CUSTODIAN IS AWARE OF ANY LAWFUL ACCESS TO THE ACCOUNT
15 FOLLOWING THE RECEIPT OF THE FIDUCIARY'S REQUEST.

16 (E) THIS ARTICLE DOES NOT LIMIT A CUSTODIAN'S ABILITY TO OBTAIN OR
17 REQUIRE A FIDUCIARY OR DESIGNATED RECIPIENT REQUESTING DISCLOSURE OR
18 TERMINATION UNDER THIS ARTICLE TO OBTAIN A COURT ORDER WHICH:

19 (1) SPECIFIES THAT AN ACCOUNT BELONGS TO THE WARD OR PRINCIPAL;

20 (2) SPECIFIES THAT THERE IS SUFFICIENT CONSENT FROM THE WARD OR PRIN-
21 CIPAL TO SUPPORT THE REQUESTED DISCLOSURE; AND

22 (3) CONTAINS A FINDING REQUIRED BY LAW OTHER THAN THIS ARTICLE.

23 (F) A CUSTODIAN AND ITS OFFICERS, EMPLOYEES, AND AGENTS ARE IMMUNE
24 FROM LIABILITY FOR AN ACT OR OMISSION DONE IN GOOD FAITH IN COMPLIANCE
25 WITH THIS ARTICLE.

26 PART 5. MISCELLANEOUS PROVISIONS

27 S 13-A-5.1 RELATION TO ELECTRONIC SIGNATURE IN GLOBAL AND NATIONAL
28 COMMERCE ACT

29 THIS ARTICLE MODIFIES, LIMITS, OR SUPERSEDES THE ELECTRONIC SIGNATURES
30 IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. SECTION 7001 ET SEQ., BUT
31 DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101(C) OF SUCH ACT, 15
32 U.S.C. SECTION 7001(C), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE
33 NOTICES DESCRIBED IN SECTION 103(B) OF SUCH ACT, 15 U.S.C. SECTION
34 7003(B).

35 S 13-A-5.2 SEVERABILITY

36 IF ANY PROVISION OF THIS ARTICLE OR ITS APPLICATION TO ANY PERSON OR
37 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
38 PROVISIONS OR APPLICATIONS OF THIS ARTICLE WHICH CAN BE GIVEN EFFECT
39 WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE
40 PROVISIONS OF THIS ARTICLE ARE SEVERABLE.

41 S 2. This act shall take effect immediately.