

2016 Regular Session

HOUSE BILL NO. 1118

BY REPRESENTATIVE HUNTER

TELECOMMUNICATIONS: Authorizes certain fiduciaries to exercise control respecting the digital property of decedents and other certain persons

1 AN ACT

2 To enact Chapter 44 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 51:2701 through 2720, relative to fiduciaries and the digital property of
4 decedents and other certain persons; to provide for a short title, definitions, and
5 applicability; to authorize a user to allow or disallow a custodian to make certain
6 digital assets disclosures on behalf of the user; to specify for a user's direction of
7 disclosure to override certain contrary provisions; to provide for the rights of certain
8 persons with respect to terms-of-service agreements; to provide procedure for the
9 disclosure of digital assets; to provide for a custodian's disclosure of a deceased
10 user's electronic communications and other digital assets when certain circumstances
11 apply; to provide for a custodian's disclosure of the content of electronic
12 communications or other digital assets of a principal when certain circumstances
13 apply; to provide for a custodian's disclosure of the digital assets held in trust to a
14 trustee who is the original user; to provide a custodian's disclosure of the content of
15 electronic communications or other digital assets held in trust to a trustee who is not
16 the original user; to provide certain rights, duties, authorities, and responsibilities for
17 certain fiduciaries; to require certain compliance of a custodian; to provide immunity
18 from liability for a custodian and respective officers, employees, and agents acting
19 in good faith in compliance with duties; to provide for devolution of rights by

1 intestacy; to provide for certain uniformity and relation to federal law; to provide for
2 severability; and to provide for related matters.

3 Be it enacted by the Legislature of Louisiana:

4 Section 1. Chapter 44 of Title 51 of the Louisiana Revised Statutes of 1950,
5 comprised of R.S. 51:2701 through 2720, is hereby enacted to read as follows:

6 CHAPTER 44. REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

7 §2701. Short Title

8 This Chapter shall be known and may be cited as the "Revised Uniform
9 Fiduciary Access to Digital Assets Act".

10 §2702. Definitions

11 As used in this Chapter, the terms defined in this Section have the meanings
12 given to them, except where the context expressly indicates otherwise:

13 (1) "Account" means an arrangement under a terms-of-service agreement in
14 which a custodian carries, maintains, processes, receives, or stores a digital asset of
15 the user or provides goods or services to the user.

16 (2) "Agent" means an attorney-in-fact granted authority pursuant to a durable
17 or nondurable power of attorney.

18 (3) "Carries" means engages in the transmission of an electronic
19 communication.

20 (4) "Catalogue of electronic communications" means information that
21 identifies each person with which a user has had an electronic communication, the
22 time and date of the communication, and the electronic address of the person.

23 (5) "Conservator" means a person appointed by a court to manage the estate
24 of a living individual. The term includes a limited conservator.

25 (6) "Content of an electronic communication" means information concerning
26 the substance or meaning of the communication that meets all of the following
27 criteria:

28 (a) Has been sent or received by a user.

1 (b) Is in electronic storage by a custodian providing an electronic
2 communication service to the public or is carried or maintained by a custodian
3 providing a remote computing service to the public.

4 (c) Is not readily accessible to the public.

5 (7) "Court" means the Nineteenth Judicial District Court.

6 (8) "Custodian" means a person that carries, maintains, processes, receives,
7 or stores a digital asset of a user.

8 (9) "Designated recipient" means a person chosen by a user using an online
9 tool to administer digital assets of the user.

10 (10) "Digital asset" means an electronic record in which an individual has
11 a right or interest. The term does not include an underlying asset or liability unless
12 the asset or liability is itself an electronic record.

13 (11) "Electronic" means relating to technology having electrical, digital,
14 magnetic, wireless, optical, electromagnetic, or similar capabilities.

15 (12) "Electronic communication" has the meaning set forth in 18 U.S.C.
16 Section 2510(12), as amended from time to time.

17 (13) "Electronic communication service" means a custodian that provides to
18 a user the ability to send or receive an electronic communication.

19 (14) "Fiduciary" means an original, additional, or successor personal
20 representative, conservator, agent, or trustee.

21 (15) "Information" means data, text, images, videos, sounds, codes,
22 computer programs, software, databases, or the like.

23 (16) "Online tool" means an electronic service provided by a custodian that
24 allows the user, in an agreement distinct from the terms-of-service agreement
25 between the custodian and user, to provide directions for disclosure or nondisclosure
26 of digital assets to a third person.

27 (17) "Person" means an individual, estate, business or nonprofit entity,
28 public corporation, government or governmental subdivision, agency,
29 instrumentality, or other legal entity.

1 (18) "Personal representative" means an executor, administrator, special
2 administrator, or person that performs substantially the same function as described
3 in other law of this state, notwithstanding the provisions of Paragraphs 1 through
4 18 of this Section.

5 (19) "Power of attorney" means a record that grants an agent authority to act
6 in the place of a principal.

7 (20) "Principal" means an individual who grants authority to an agent in a
8 power of attorney.

9 (21) "Protected person" means an individual for whom a conservator has
10 been appointed. The term includes an individual for whom an application for the
11 appointment of a conservator is pending.

12 (22) "Record" means information that is inscribed on a tangible medium or
13 that is stored in an electronic or other medium and is retrievable in perceivable form.

14 (23) "Remote computing service" means a custodian that provides to a user
15 computer-processing services or the storage of digital assets by means of an
16 electronic communications system, as defined in 18 U.S.C. Section 2510(14), as
17 amended from time to time.

18 (24) "Terms-of-service agreement" means an agreement that controls the
19 relationship between a user and a custodian.

20 (25) "Trustee" means a fiduciary with legal title to property pursuant to an
21 agreement or declaration that creates a beneficial interest in another. The term
22 includes a successor trustee.

23 (26) "User" means a person that has an account with a custodian.

24 (27) "Will" includes a codicil or testamentary instrument that only appoints
25 an executor, or such instrument that revokes or revises a testamentary instrument.

26 §2703. Applicability

27 A. The provisions of this Chapter apply to the following:

28 (1) A fiduciary acting pursuant to the provisions of a will or power of
29 attorney.

1 (2) A personal representative acting for a decedent.

2 (3) A commenced conservatorship proceeding.

3 (4) A trustee acting pursuant to a trust.

4 (5) A custodian, if the user resides in this state or resided in this state at the
5 time of the user's death.

6 B. The provisions of this Chapter do not apply to a digital asset of an
7 employer used by an employee in the ordinary course of the employer's business.

8 §2704. User direction for disclosure of digital assets

9 A. A user may use an online tool to direct the custodian to disclose to a
10 designated recipient or not to disclose some or all of the user's digital assets,
11 including the content of electronic communications. If the online tool allows the
12 user to modify or delete a direction at all times, a direction regarding disclosure
13 using an online tool overrides a contrary direction by the user in a will, trust, power
14 of attorney, or other record.

15 B. If a user has not used an online tool to give direction pursuant to
16 Subsection A of this Section, 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 record,
18 disclosure to a fiduciary of some or all of the user's digital assets, including the
19 content of electronic communications sent or received by the user.

20 C. A user's direction pursuant to Subsection A or B of this Section overrides
21 a contrary provision in a terms-of-service agreement that does not require the user
22 to act affirmatively and distinctly from the user's assent to the terms of service.

23 §2705. Terms-of-service agreement

24 A. The provisions of this Chapter do not change or impair a right of a
25 custodian or a user pursuant to a terms-of-service agreement to access and use digital
26 assets of the user.

27 B. The provisions of this Chapter do not give a fiduciary or designated
28 recipient any new or expanded rights other than those held by the user for whom, or
29 for whose estate, the fiduciary or designated recipient acts or represents.

1 C. A fiduciary's or designated recipient's access to digital assets may be
2 modified or eliminated by a user, federal law, or a terms-of-service agreement if the
3 user has not provided direction as described in R.S. 51:2704.

4 §2706. Procedure for disclosing digital assets

5 A.(1) When disclosing digital assets of a user, the custodian may, at its sole
6 discretion, do any of the following:

7 (a) Grant a fiduciary or designated recipient full access to the user's account.

8 (b) Grant a fiduciary or designated recipient partial access to the user's
9 account sufficient to perform the tasks with which the fiduciary or designated
10 recipient is charged.

11 (c) Provide a fiduciary or designated recipient a copy in a record of any
12 digital asset that, on the date the custodian received the request for disclosure, the
13 user could have accessed if the user were alive and had full capacity and access to
14 the account.

15 (2) A custodian may assess to a fiduciary a reasonable administrative charge
16 for the cost of disclosing digital assets.

17 B.(1) A custodian need not disclose a digital asset deleted by a user.

18 (2) If a user directs or a fiduciary requests a custodian to disclose some, but
19 not all, of the user's digital assets, the custodian need not disclose the assets if
20 segregation of the assets would impose an undue burden on the custodian. If the
21 custodian believes the direction or request imposes an undue burden, the custodian
22 or fiduciary may seek an order from the court to disclose digital assets in any of the
23 following manners:

24 (a) A subset limited by date of the user's digital assets.

25 (b) All of the user's digital assets to the fiduciary or designated recipient.

26 (c) None of the user's digital assets.

27 (d) All of the user's digital assets to the court for review in camera.

1 §2707. Disclosure of content of electronic communications of deceased user

2 If a deceased user consented or a court directs disclosure of the contents of
3 electronic communications of the user, the custodian shall disclose to the personal
4 representative of the user's estate the content of an electronic communication sent or
5 received by the user if the representative gives the custodian all of the following:

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

7 (2) A certified copy of the death certificate of the user.

8 (3) A certified copy of the letter of appointment of the representative or a
9 small succession affidavit or court order.

10 (4) Unless the user provided direction using an online tool, a copy of the
11 user's will, trust, power of attorney, or other record evidencing the user's consent to
12 disclosure of the content of electronic communications.

13 (5) If requested by the custodian, the representative shall also provide either
14 of the following:

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

17 (b) Evidence linking the account to the user.

18 (c) A finding by the court that provides any of the following:

19 (i) The user had a specific account with the custodian identifiable by the
20 information specified in Paragraph (5)(a) of this Section.

21 (ii) Disclosure of the content of electronic communications of the user does
22 not violate 18 U.S.C. Section 2701 et seq. or 47 U.S.C. Section 222, as amended
23 from time to time, or other applicable law.

24 (iii) Unless the user provided direction using an online tool, the user
25 consented to disclosure of the content of electronic communications.

26 (iv) Disclosure of the content of electronic communications of the user is
27 reasonably necessary for administration of the estate.

1 §2708. Disclosure of other digital assets of deceased user

2 Unless the user prohibited disclosure of digital assets or the court directs
3 otherwise, a custodian shall disclose to the personal representative of a deceased
4 user's estate a catalogue of electronic communications sent or received by the user
5 and digital assets, other than the content of electronic communications of the user,
6 if the representative gives the custodian all of the following:

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

8 (2) A certified copy of the death certificate of the user.

9 (3) A certified copy of the letter of appointment of the representative or a
10 small succession affidavit or court order.

11 (4) If requested by the custodian, the representative shall also provide any
12 of the following:

13 (a) A number, username, address, or other unique subscriber or account
14 identifier assigned by the custodian to identify the user's account.

15 (b) Evidence linking the account to the user.

16 (c) An affidavit stating that disclosure of the user's digital assets is
17 reasonably necessary for administration of the estate.

18 (d) A finding by the court that:

19 (i) The user had a specific account with the custodian identifiable by the
20 information specified in Subparagraph (4)(a) of this Section.

21 (ii) Disclosure of the user's digital assets is reasonably necessary for
22 administration of the estate.

23 §2709. Disclosure of content of electronic communications of principal

24 To the extent a power of attorney expressly grants an agent authority over the
25 content of electronic communications sent or received by the principal and unless
26 directed otherwise by the principal or the court, a custodian shall disclose to the
27 agent the content if the agent gives the custodian all of the following:

28 (1) A written request for disclosure in physical or electronic form.

1 (2) An original or copy of the power of attorney expressly granting the agent
2 authority over the content of electronic communications of the principal.

3 (3) A certification by the agent, under penalty of perjury, that the power of
4 attorney is in effect.

5 (4) If requested by the custodian, the agent shall also provide either of the
6 following:

7 (a) A number, username, address, or other unique subscriber or account
8 identifier assigned by the custodian to identify the principal's account.

9 (b) Evidence linking the account to the principal.

10 §2710. Disclosure of other digital assets of principal

11 Unless otherwise ordered by the court, directed by the principal, or provided
12 by a power of attorney, a custodian shall disclose to an agent with specific authority
13 over digital assets or general authority to act on behalf of a principal a catalogue of
14 electronic communications sent or received by the principal and digital assets, other
15 than the content of electronic communications, of the principal if the agent gives the
16 custodian all of the following:

17 (1) A written request for disclosure in physical or electronic form.

18 (2) An original or a copy of the power of attorney that gives the agent
19 specific authority over digital assets or general authority to act on behalf of the
20 principal.

21 (3) A certification by the agent, under penalty of perjury, that the power of
22 attorney is in effect.

23 (4) If requested by the custodian, the agent shall also provide either of the
24 following:

25 (a) A number, username, address, or other unique subscriber or account
26 identifier assigned by the custodian to identify the principal's account.

27 (b) Evidence linking the account to the principal.

1 §2711. Disclosure of digital assets held in trust when trustee is original user

2 Unless otherwise ordered by the court or provided in a trust, a custodian shall
3 disclose to a trustee who is an original user of an account any digital assets of the
4 account held in trust, including a catalogue of electronic communications of the
5 trustee and the content of electronic communications.

6 §2712. Disclosure of contents of electronic communications held in trust when
7 trustee not original user

8 Unless otherwise ordered by the court, directed by the user, or provided in
9 a trust, a custodian shall disclose to a trustee who is not an original user of an
10 account the content of an electronic communication sent or received by an original
11 or successor user and carried, maintained, processed, received, or stored by the
12 custodian in the account of the trust if the trustee gives the custodian all of the
13 following:

14 (1) A written request for disclosure in physical or electronic form.

15 (2) A certified copy of the trust instrument that includes consent to
16 disclosure of the content of electronic communications to the trustee.

17 (3) A certification by the trustee, under penalty of perjury, that the trust
18 exists and the trustee is a currently acting trustee of the trust.

19 (4) If requested by the custodian, the trustee shall also provide either of the
20 following:

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

23 (b) Evidence linking the account to the trust.

24 §2713. Disclosure of other digital assets held in trust when trustee not original user

25 Unless otherwise ordered by the court, directed by the user, or provided in
26 a trust, a custodian shall disclose to a trustee who is not an original user of an
27 account, a catalogue of electronic communications sent or received by an original or
28 successor user and stored, carried, or maintained by the custodian in an account of
29 the trust and any digital assets, other than the content of electronic communications,

1 in which the trust has a right or interest if the trustee gives the custodian all of the
2 following:

3 (1) A written request for disclosure in physical or electronic form.

4 (2) A certified copy of the trust instrument.

5 (3) A certification by the trustee, under penalty of perjury, that the trust
6 exists and the trustee is a currently acting trustee of the trust.

7 (4) If requested by the custodian, the trustee shall also provide either of the
8 following:

9 (a) A number, username, address, or other unique subscriber or account
10 identifier assigned by the custodian to identify the trust's account.

11 (b) Evidence linking the account to the trust.

12 §2714. Disclosure of digital assets to conservator of protected person

13 A. After an opportunity for a hearing of a proceeding for conservatorship,
14 the court may grant a conservator access to the digital assets of a protected person.

15 B.(1) Unless otherwise ordered by the court or directed by the user, a
16 custodian shall disclose to a conservator the catalogue of electronic communications
17 sent or received by a protected person and any digital assets, other than the content
18 of electronic communications, in which the protected person has a right or interest
19 if the conservator gives the custodian both of the following:

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

21 (b) A certified copy of the court order that gives the conservator authority
22 over the digital assets of the protected person.

23 (2) If requested by the custodian, the conservator shall also provide either of
24 the following:

25 (a) A number, username, address, or other unique subscriber or account
26 identifier assigned by the custodian to identify the account of the protected person.

27 (b) Evidence linking the account to the protected person.

28 C. A conservator with general authority to manage the assets of a protected
29 person may request a custodian of the digital assets of the protected person to

1 suspend or terminate an account of the protected person for good cause. A
2 conservator making a request pursuant to the provisions of this Subsection shall also
3 provide a certified copy of the court order giving the conservator authority over the
4 protected person's property.

5 §2715. Fiduciary duty and authority

6 A. The legal duties imposed on a fiduciary charged with managing tangible
7 property apply to the management of digital assets. Such duties include but are not
8 limited to the following:

9 (1) The duty of care.

10 (2) The duty of loyalty.

11 (3) The duty of confidentiality.

12 B. Except as otherwise provided in R.S. 51:2704, a fiduciary's or designated
13 recipient's authority with respect to a digital asset of a user is subject to all of the
14 following:

15 (1) The applicable terms-of-service agreement.

16 (2) Other applicable law, including copyright law.

17 (3) In the case of a fiduciary, the authority is limited by the scope of the
18 fiduciary's duties.

19 C. It is a prohibited act for a fiduciary or designated recipient to use any
20 respective authority to impersonate the user.

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

25 E. A fiduciary acting within the scope of the fiduciary's duties is an
26 authorized user of the property of the decedent, protected person, principal, or settlor
27 for the purpose of applicable computer fraud and unauthorized computer access laws,
28 including but not limited to R.S. 14:73.5 and 73.7.

1 F. A fiduciary with authority over the corporeal movable property of a
2 decedent, protected person, principal, or settlor has the following rights:

3 (1) To access the property and any digital asset stored in it.

4 (2) To act as an authorized user for the purpose of computer fraud and
5 unauthorized computer access laws, including but not limited to R.S. 14:73.5 and
6 73.7.

7 G. A custodian may disclose information in an account to a fiduciary of the
8 user when the information is required to terminate an account used to access digital
9 assets licensed to the user.

10 H. A fiduciary of a user may request a custodian to terminate the user's
11 account. A fiduciary's request for termination shall be in writing in either physical
12 or electronic form and accompanied by both of the following:

13 (1) If the user is deceased, a certified copy of the death certificate of the user.

14 (2) A certified copy of the letter of appointment of the representative or a
15 small succession affidavit or court order, power of attorney, or trust giving the
16 fiduciary authority over the account.

17 (3) If requested by the custodian, the fiduciary shall also provide any of the
18 following:

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

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

22 (c) A finding by the court that the user had a specific account with the
23 custodian identifiable by the information specified in Paragraph (3)(a) of this
24 Subsection.

25 §2716. Custodian compliance and immunity

26 A. Not later than sixty days after receipt of the information as described in
27 the provisions of R.S. 51:2707 through 2715, a custodian shall comply with a request
28 from a fiduciary or designated recipient to disclose digital assets or terminate an

1 account. If the custodian fails to comply, the fiduciary or designated recipient may
2 petition the court for an order directing compliance.

3 B. An order as described in Subsection A of this Section directing
4 compliance shall contain a finding that compliance is not in violation of 18 U.S.C.
5 Section 2702, as amended from time to time.

6 C. A custodian may notify the user that a request for disclosure or to
7 terminate an account was made pursuant to the provisions of this Chapter.

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

11 E. The provisions of this Chapter do not limit a custodian's ability to obtain
12 on its own accord, or require a fiduciary or designated recipient requesting disclosure
13 or termination, to obtain a court order which does all of the following:

14 (1) Specifies that an account belongs to the protected person or principal.

15 (2) Specifies that there is sufficient consent from the protected person or
16 principal to support the requested disclosure.

17 (3) Contains a finding required by law other than required by the provisions
18 of this Chapter.

19 F. There is no liability for a custodian and its officers, employees, or agents
20 for an act or omission done in good faith in compliance with the provisions of this
21 Chapter.

22 §2717. Rights to intestate successors

23 A. Notwithstanding the provisions of this Chapter, if a decedent user did not
24 provide direction for the disclosure of some or all of the decedent user's digital
25 assets, including the content of electronic communications, and if the court has not
26 ordered otherwise, the right to access any digital asset, including the content of
27 electronic communications, devolves by intestacy.

1 B. An intestate successor may, after obtaining a court order to disclose
2 digital assets, request the custodian to disclose the decedent user's digital assets,
3 including the content of electronic communications, or terminate the account.

4 C. If an intestate successor obtains a court order and makes a request
5 pursuant to the provisions of this Section, the successor shall submit all information
6 requested by a custodian, exclusive to the information described in this Chapter to
7 be submitted to a custodian, and the custodian shall comply with the request within
8 the sixty-day time frame as prescribed in R.S. 51:2716. If the custodian fails to
9 comply, the successor may petition the court for an order directing compliance.

10 §2718. Uniformity of application and construction

11 In applying and construing the provisions of this Chapter, consideration is
12 given to the need to promote uniformity of the law with respect to its subject matter
13 among states that enact the Revised Uniform Fiduciary Access To Digital Assets
14 Act.

15 §2719. Relation to electronic signatures in global and national commerce act

16 The provisions of this Chapter modify, limit, or supersede the Electronic
17 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.,
18 but do not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section
19 7001(c), or authorize electronic delivery of any of the notices described in Section
20 103(b) of that Act, 15 U.S.C. Section 7003(b).

21 §2720. Severability

22 If any provision of this Chapter or its application to any person or
23 circumstance is held invalid, the invalidity does not affect other provisions or
24 applications of this Chapter which can be given effect without the invalid provision
25 or application, and to this end the provisions of this Chapter are severable.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1118 Reengrossed

2016 Regular Session

Hunter

Abstract: Creates the Revised Uniform Fiduciary Access to Digital Assets Act.

Proposed law is known and may be cited as the "Revised Uniform Fiduciary Access to Digital Assets Act".

Proposed law provides certain definitions.

Proposed law applies to the following persons or circumstances with respect to a user's digital assets: (1) A fiduciary acting pursuant to the provisions of a will or power of attorney, (2) A personal representative acting for a decedent, (3) A commenced conservatorship proceeding, (4) A trustee acting pursuant to a trust, and (5) A custodian, if the user resides in the state of La. or resided in this state at the time of the user's death.

Proposed law does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

Proposed law authorizes a user to use an online tool to direct a custodian to disclose or not to disclose to a designated recipient some or all of the user's digital assets, including the content of electronic communications. Provides if the online tool allows the user to modify or delete a direction at all times, a direction of disclosure made through the online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

If a user has not used an online tool to provide direction or if the custodian has not provided an online tool, proposed law authorizes the user to allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

Proposed law provides that a user's direction overrides a contrary provision in a terms-of-service agreement if such agreement does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

The provisions of proposed law do not do either of the following: (1) Change or impair the right of a custodian to access and use digital assets of the user pursuant to a terms-of-service agreement or (2) Give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

Proposed law provides that a fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, federal law, or a terms-of-service agreement if the user has not provided direction as described in proposed law.

When disclosing digital assets of a user to a fiduciary, proposed law provides that a custodian may, at its sole discretion, do any of the following: (1) Grant a fiduciary or designated recipient full access to the user's account, (2) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged, and (3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

Proposed law further provides that a custodian may assess to a fiduciary a reasonable administrative charge for the cost of disclosing digital assets.

Proposed law provides that a custodian need not disclose a digital asset deleted by a user. Further provides if a user directs or a fiduciary requests a custodian to disclose some, but not all of the user's digital assets, the custodian need not disclose the assets if segregation of the assets imposes an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek a court order to disclose digital assets in any of the following manners:

- (1) A subset limited by date of the user's digital assets.
- (2) All of the user's digital assets to the fiduciary or designated recipient.
- (3) None of the user's digital assets.
- (4) All of the user's digital assets to the court for review in camera.

If a deceased user consented or a court directs disclosure of the deceased user's contents of electronic communications, proposed law requires the custodian to disclose to the personal representative of the user's estate the content of electronic communications sent or received by the user, if the representative gives the custodian all of the following: (1) A written request for disclosure in physical or electronic form, (2) A certified copy of the death certificate of the user, (3) A certified copy of the letter of appointment of the representative or a small succession affidavit or court order, and (4) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications.

If requested by the custodian, proposed law requires the representative to also provide to the custodian either of the following: (1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account, (2) Evidence linking the account to the user, (3) A finding by the court that provides either of the following: (a) The user had a specific account with the custodian identifiable by the information specified in proposed law, (b) Disclosure of the content of electronic communications of the user does not violate certain federal law, (c) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications, or (d) Disclosure of the user's electronic communications content is reasonably necessary for administration of the estate.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, proposed law requires a custodian to disclose to the personal representative of a deceased user's estate a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications of the user, if the representative gives the custodian all of the following: (1) A written request for disclosure in physical or electronic form, (2) A certified copy of the death certificate of the user, and (3) A certified copy of the letter of appointment of the representative or a small succession affidavit or court order.

Proposed law further provides, if requested by the custodian, the representative is required to also provide either of the following: (1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account, (2) Evidence linking the account to the user, (3) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate, or (4) A finding by the court that provides either of the following: (a) The user had a specific account with the custodian identifiable by the information described in proposed law or (b) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal, and unless directed otherwise by the principal or the court, proposed law requires a custodian to disclose to the agent the content if the agent gives the custodian all of the following: (1) A written request for disclosure in physical or electronic form, (2) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal, and (3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect.

If requested by the custodian, proposed law requires the agent to also provide either of the following: (1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account or (2) Evidence linking the account to the principal.

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, proposed law requires a custodian to disclose to an agent who has specific authority over digital assets or general authority to act on behalf of a principal, a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian all of the following: (1) A written request for disclosure in physical or electronic form, (2) An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal, and (3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect.

If requested by the custodian, proposed law requires the agent to also provide either of the following: (1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account or (2) Evidence linking the account to the principal.

Unless otherwise ordered by the court or provided in a trust, proposed law requires a custodian to disclose to a trustee who is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, proposed law requires a custodian to disclose to a trustee who is not an original user of an account the content of electronic communications sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian all of the following: (1) A written request for disclosure in physical or electronic form, (2) A certified copy of the trust instrument that includes consent to disclosure of the content of electronic communications to the trustee, and (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.

If requested by the custodian, proposed law requires the trustee to also provide either of the following: (1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account or (2) Evidence linking the account to the user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, proposed law requires a custodian to disclose to a trustee who is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian all of the following: (1) A written request for disclosure in physical or electronic form, (2) A certified copy of the trust instrument, and (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.

If requested by the custodian, proposed law further requires the trustee to also provide either of the following: (1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account, or (2) Evidence linking the account to the user.

Proposed law provides that the court may, after an opportunity for a hearing of a proceeding for conservatorship, grant a conservator access to the digital assets of a protected person. Further requires, unless otherwise ordered by the court or directed by the user, a custodian to disclose to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian both of the following: (1) A written request for disclosure in physical or electronic form and (2) A certified copy of the court order giving the conservator authority over the digital assets of the protected person.

If requested by the custodian, proposed law requires the conservator to also provide either of the following: (1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account or (2) Evidence linking the account to the user.

Proposed law authorizes a conservator, one with general authority to manage the assets of a protected person, to request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A conservator making such a request is also required to provide a certified copy of the court order giving the conservator authority over the protected person's property.

Proposed law provides certain legal duties of a fiduciary who manages a user's tangible property. Further provides that such duties also apply to the management of the user's digital assets. Such duties include but are not limited to the following: (1) The duty of care, (2) The duty of loyalty, and (3) The duty of confidentiality.

Except as otherwise provided in proposed law, a fiduciary's or designated recipient's authority with respect to a digital asset of a user is subject to all of the following: (1) The applicable terms-of-service agreement, (2) Other applicable law, including copyright law, and (3) In the case of a fiduciary, the authority is limited by the scope of the fiduciary's duties.

Proposed law makes it a prohibited act for a fiduciary or designated recipient to use any respective authority to impersonate the user.

Proposed law gives a fiduciary with authority over the property of a decedent, protected person, principal, or settlor the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest, when such right or interest is not held by a custodian or subject to a terms-of-service agreement.

Proposed law provides that a fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including but not limited to certain provisions of present law (R.S. 14:73.5 and 73.7).

Proposed law provides that a fiduciary with authority over the tangible, personal property of a decedent, protected person, principal, or settlor has the following rights: (1) To access the property and any digital asset stored in it and (2) To act as an authorized user for the purpose of computer fraud and unauthorized computer access laws, including but not limited to certain provisions of present law (R.S. 14:73.5 and 73.7).

Proposed law authorizes a custodian to disclose information in an account to a user's fiduciary when the information is required to terminate an account used to access digital assets licensed to the user.

Proposed law provides for a user's fiduciary to request a custodian to terminate the user's account. A fiduciary's request for termination is required to be written in either physical or electronic form and accompanied by both of the following: (1) If the user is deceased, a certified copy of the death certificate of the user and (2) A certified copy of the letter of appointment of the representative or a small succession affidavit or court order, power of attorney, or trust giving the fiduciary authority over the account.

If the fiduciary makes a request for account termination, and if requested by the custodian, proposed law requires the fiduciary to also provide either of the following: (1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account, (2) Evidence linking the account to the user, or (3) A finding by the court that the user had a specific account with the custodian identifiable by the information specified in proposed law.

Within 60 days after a custodian's receipt of certain information as described in proposed law, the custodian is required to comply with a fiduciary's or designated recipient's request to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may petition the court for an order directing compliance. A court order to direct compliance must contain a finding that compliance is not in violation of certain federal law (18 U.S.C. Section 2702).

Proposed law authorizes a custodian to notify the user that a request for disclosure or to terminate an account was made pursuant to the provisions of proposed law.

Proposed law provides that if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request, a custodian may deny a request from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account.

The provisions of proposed law do not limit a custodian's ability to obtain on its own accord, or to require a fiduciary or designated recipient requesting disclosure or termination, to obtain a court order which does all of the following: (1) Specifies that an account belongs to the protected person or principal, (2) Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure, and (3) Contains a finding required by law other than required by the provisions of this Chapter.

Proposed law provides no liability for a custodian and its officers, employees, or agents for an act or omission done in good faith in compliance with the provisions of proposed law.

Proposed law provides if a decedent user does not give written direction for the disclosure of some or all of the decedent user's digital assets, including the content of electronic communications, and if the court has not ordered otherwise, the right to access any digital asset, including the content of electronic communications, devolves by intestacy.

Proposed law authorizes an intestate successor, after the attainment of a court order, to request the custodian to disclose the decedent user's digital assets, including the content of electronic communications, or terminate the account. Further provides if the successor makes such a request, the successor is required to submit all information requested by a custodian, exclusive to the information described in proposed law, and the custodian is required to comply with the request within 60 days.

Proposed law authorizes an intestate successor to petition the court for an order directing compliance, if the custodian fails to comply as requested.

Proposed law applies consideration for the need to promote uniformity of proposed law with respect to its subject matter among states that enact the Revised Uniform Fiduciary Access To Digital Assets Act.

Proposed law modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act. However, proposed law does not modify, limit, or supersede certain provisions of that Act, nor does it authorize electronic delivery of any of the notices described in certain Sections of that Act.

The provisions of proposed law are severable. If certain provisions or applications of proposed law are held invalid with respect to certain persons or circumstances, the respective invalidity does not affect other provisions or applications which can be given effect without the invalid provision or application.

(Adds R.S. 51:2701-2720)

The House Floor Amendments to the engrossed bill:

1. Change the term "heir" to "intestate successor".
2. Provide for an intestate successor to obtain a court order prior to making a request of a custodian.
3. Make technical changes.