

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  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

AN ACT

To enact Chapter 44 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:2701 through 2720, relative to fiduciaries and the digital property of decedents and other certain persons; to provide for a short title, definitions, and applicability; to authorize a user to allow or disallow a custodian to make certain digital assets disclosures on behalf of the user; to specify for a user's direction of disclosure to override certain contrary provisions; to provide for the rights of certain persons with respect to terms-of-service agreements; to provide procedure for the disclosure of digital assets; to provide for a custodian's disclosure of a deceased user's electronic communications and other digital assets when certain circumstances apply; to provide for a custodian's disclosure of the content of electronic communications or other digital assets of a principal when certain circumstances apply; to provide for a custodian's disclosure of the digital assets held in trust to a trustee who is the original user; to provide a custodian's disclosure of the content of electronic communications or other digital assets held in trust to a trustee who is not the original user; to provide certain rights, duties, authorities, and responsibilities for certain fiduciaries; to require certain compliance of a custodian; to provide immunity from liability for a custodian and respective officers, employees, and agents acting 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 either 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 either  
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 Paragraph (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 protection 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 tangible, personal 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 either of  
18           the 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 does  
24 not 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. The respective heir may request the custodian to disclose the decedent  
2           user's digital assets, including the content of electronic communications, or terminate  
3           the account.

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

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 a respective heir 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 a respective heir makes a request for disclosure or termination of the decedent's account, the heir 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 heir 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)