

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 518 Session of 2015

INTRODUCED BY PILEGGI, BAKER, COSTA, RAFFERTY, FOLMER, GORDNER, VULAKOVICH, HUGHES, SCHWANK AND TARTAGLIONE, FEBRUARY 20, 2015

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, OCTOBER 27, 2015

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in fiduciary access to <--
3 digital assets, providing for access by personal
4 representative to digital assets of decedent, for access by
5 conservator to digital assets of protected person, for
6 access by agent to digital assets of principal, for access by
7 trustee to digital assets, for fiduciary authority, for
8 compliance, for custodian immunity, for uniformity of
9 application and construction and for applicability. ENACTING <--
10 THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT
11 (2015); AND PROVIDING FOR USER DIRECTION AND AGREEMENTS, FOR
12 DISCLOSURE OF DIGITAL ASSETS, FOR FUNCTIONS OF FIDUCIARIES
13 AND FOR COMPLIANCE AND IMMUNITY FOR CUSTODIANS OF DIGITAL
14 ASSETS.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Title 20 of the Pennsylvania Consolidated
18 Statutes is amended by adding a chapter to read:

CHAPTER 39

FIDUCIARY ACCESS TO DIGITAL ASSETS <--

21 Sec.

22 3901. Definitions.

23 3902. Access by personal representative to digital assets of

1 ~~decedent.~~
2 ~~3903. Access by conservator to digital assets of protected~~
3 ~~person.~~
4 ~~3904. Access by agent to digital assets of principal.~~
5 ~~3905. Access by trustee to digital assets.~~
6 ~~3906. Fiduciary authority.~~
7 ~~3907. Compliance.~~
8 ~~3908. Custodian immunity.~~
9 ~~3909. Uniformity of application and construction.~~
10 ~~3910. Relation to Electronic Signatures in Global and National~~
11 ~~Commerce Act.~~
12 ~~3911. Applicability.~~
13 ~~§ 3901. Definitions.~~

14 ~~The following words and phrases when used in this chapter~~
15 ~~shall have the meanings given to them in this section unless the~~
16 ~~context clearly indicates otherwise:~~

17 ~~"Account holder." Either of the following:~~

18 ~~(1) a person that has entered into a terms of service~~
19 ~~agreement with a custodian; or~~

20 ~~(2) a fiduciary for a person described in paragraph (1).~~

21 ~~"Agent." An attorney in fact granted authority under a~~
22 ~~durable or nondurable power of attorney.~~

23 ~~"Carries." Engaging in the transmission of electronic~~
24 ~~communications.~~

25 ~~"Catalog of electronic communications." Information that~~
26 ~~identifies each person with which an account holder has had an~~
27 ~~electronic communication, the time and date of the communication~~
28 ~~and the electronic address of the person.~~

29 ~~"Conservator." A person appointed by a court to manage the~~
30 ~~estate of a living individual. The term includes a limited~~

1 ~~conservator.~~

2 ~~"Content of an electronic communication." Information not~~
3 ~~readily accessible to the public concerning the substance or~~
4 ~~meaning of an electronic communication.~~

5 ~~"Custodian." A person that carries, maintains, processes,~~
6 ~~receives or stores a digital asset of an account holder.~~

7 ~~"Digital asset." A record that is electronic. The term does~~
8 ~~not include an underlying asset or liability unless the asset or~~
9 ~~liability is itself a record that is electronic.~~

10 ~~"Electronic." Relating to technology having electrical,~~
11 ~~digital, magnetic, wireless, optical, electromagnetic or similar~~
12 ~~capabilities.~~

13 ~~"Electronic communication." A digital asset stored by an~~
14 ~~electronic communication service or carried or maintained by a~~
15 ~~remote computing service. The term includes the catalog of~~
16 ~~electronic communications and the content of an electronic~~
17 ~~communication.~~

18 ~~"Electronic communication service." A custodian that~~
19 ~~provides to the public the ability to send or receive an~~
20 ~~electronic communication.~~

21 ~~"Fiduciary." A person that is an original, additional or~~
22 ~~successor personal representative, conservator, agent or~~
23 ~~trustee.~~

24 ~~"Governing instrument." A will, trust or instrument~~
25 ~~establishing a power of attorney or other dispositive or~~
26 ~~nominative instrument.~~

27 ~~"Information." Data, text, images, videos, sounds, codes,~~
28 ~~computer programs, software, databases or the like.~~

29 ~~"Person." An individual, estate, business or nonprofit~~
30 ~~entity, public corporation, government or governmental~~

1 ~~subdivision, agency or instrumentality or other legal entity.~~

2 ~~"Personal representative." An executor, administrator,~~
3 ~~special administrator or person that performs substantially the~~
4 ~~same function under the laws of this Commonwealth other than~~
5 ~~this chapter.~~

6 ~~"Power of attorney." A record that grants an agent authority~~
7 ~~to act in the place of a principal.~~

8 ~~"Principal." An individual who grants authority to an agent~~
9 ~~in a power of attorney.~~

10 ~~"Protected person." An individual for whom a conservator has~~
11 ~~been appointed. The term includes an individual for whom an~~
12 ~~application for the appointment of a conservator is pending.~~

13 ~~"Record." Information that is inscribed on a tangible medium~~
14 ~~or stored in an electronic or other medium and is retrievable in~~
15 ~~perceivable form.~~

16 ~~"Remote computing service." A custodian that provides to the~~
17 ~~public computer processing services or the storage of digital~~
18 ~~assets by means of an electronic communications system as~~
19 ~~defined in 18 U.S.C. § 2510(14) (relating to definitions).~~

20 ~~"Terms of service agreement." An agreement that controls the~~
21 ~~relationship between an account holder and a custodian.~~

22 ~~"Trustee." A fiduciary with legal title to an asset under an~~
23 ~~agreement or declaration that establishes a beneficial interest~~
24 ~~in others.~~

25 ~~"Will." Includes a codicil, testamentary instrument that~~
26 ~~only appoints an executor and instrument that revokes or revises~~
27 ~~a testamentary instrument.~~

28 ~~§ 3902. Access by personal representative to digital assets of~~
29 ~~decedent.~~

30 ~~Subject to section 3906(b) (relating to fiduciary authority)~~

~~and unless otherwise provided by the court or the will of a decedent, a personal representative of the decedent may access:~~

~~(1) the content of an electronic communication sent or received by the decedent if the electronic communication service or remote computing service is permitted to disclose the content under 18 U.S.C. § 2702(b) (relating to voluntary disclosure of customer communications or records);~~

~~(2) the catalog of electronic communications sent or received by the decedent; and~~

~~(3) another digital asset in which the decedent at death had a right or interest.~~

~~§ 3903. Access by conservator to digital assets of protected person.~~

~~After an opportunity for hearing under Chapter 51 (relating to minors) or Subchapter C of Chapter 55 (relating to appointment of guardian; bonds; removal and discharge), the court may grant a conservator the right to access:~~

~~(1) the content of an electronic communication sent or received by the protected person if the electronic communication service or remote computing service is permitted to disclose the content under 18 U.S.C. § 2702(b) (relating to voluntary disclosure of customer communications or records);~~

~~(2) the catalog of electronic communications sent or received by the protected person; and~~

~~(3) another digital asset in which the protected person has a right or interest.~~

~~§ 3904. Access by agent to digital assets of principal.~~

~~(a) Express grant of authority. To the extent a power of attorney expressly grants authority to an agent over the content~~

~~1 of an electronic communication of the principal, the agent may
2 access the content of an electronic communication sent or
3 received by the principal if the electronic communication
4 service or remote computing service is permitted to disclose the
5 content under 18 U.S.C. § 2702(b) (relating to voluntary
6 disclosure of customer communications or records).~~

~~7 (b) Authority of agent. Except as provided in subsection
8 (a) and unless otherwise provided by a power of attorney or the
9 court, an agent may access:~~

~~10 (1) the catalog of electronic communications sent or
11 received by the principal; and~~

~~12 (2) a digital asset in which the principal has a right
13 or interest.~~

~~14 § 3905. Access by trustee to digital assets.~~

~~15 Subject to section 3906(b) (relating to fiduciary authority)
16 and unless otherwise provided by the court or the settlor in the
17 terms of a trust, a trustee or successor of the trustee that is:~~

~~18 (1) an original account holder may access a digital
19 asset held in trust, including the catalog of electronic
20 communications sent or received by the trustee and the
21 content of an electronic communication; and~~

~~22 (2) not an original account holder may access:~~

~~23 (i) the content of an electronic communication sent
24 or received by the original or a successor account holder
25 if the electronic communication service or remote
26 computing service is permitted to disclose the content
27 under 18 U.S.C. § 2702(b) (relating to voluntary
28 disclosure of customer communications or records);~~

~~29 (ii) the catalog of electronic communications sent
30 or received by the original or a successor account~~

1 ~~holder; and~~

2 ~~(iii) another digital asset in which the original or~~
3 ~~a successor account holder has a right or interest.~~

4 ~~§ 3906. Fiduciary authority.~~

5 ~~(a) Authority. A fiduciary that is an account holder or has~~
6 ~~the right under section 3902 (relating to access by personal~~
7 ~~representative to digital assets of decedent), 3903 (relating to~~
8 ~~access by conservator to digital assets of protected person),~~
9 ~~3904 (relating to access by agent to digital assets of~~
10 ~~principal) or 3905 (relating to access by trustee to digital~~
11 ~~assets) to access a digital asset of an account holder:~~

12 ~~(1) subject to the terms of service agreement and~~
13 ~~copyright or other applicable law, may take an action~~
14 ~~concerning the asset to the extent of the account holder's~~
15 ~~authority and the fiduciary's powers under this title;~~

16 ~~(2) has, under applicable electronic privacy laws, the~~
17 ~~lawful consent of the account holder for the custodian to~~
18 ~~divulge the content of an electronic communication to the~~
19 ~~fiduciary; and~~

20 ~~(3) is, under applicable computer fraud and unauthorized~~
21 ~~access laws, including 18 Pa.C.S. §§ 7611(a)(1) and (2)~~
22 ~~(relating to unlawful use of computer and other computer~~
23 ~~crimes) and 7615 (relating to computer trespass), an~~
24 ~~authorized user.~~

25 ~~(b) Terms of service agreement. If a provision in a terms~~
26 ~~of service agreement limits a fiduciary's access to the digital~~
27 ~~assets of the account holder, the provision is void, unless the~~
28 ~~account holder, after the effective date of this chapter takes~~
29 ~~effect, agreed to the provision by an affirmative act separate~~
30 ~~from the account holder's assent to other provisions of the~~

1 ~~terms of service agreement.~~

2 ~~(c) Choice of law provision. A choice of law provision in a~~
3 ~~terms of service agreement is unenforceable against a fiduciary~~
4 ~~acting under this chapter to the extent the provision designates~~
5 ~~law that enforces a limitation on a fiduciary's access to~~
6 ~~digital assets which limitation is void under subsection (b).~~

7 ~~(d) Effect of terms of service agreement. Except as~~
8 ~~provided in subsection (b), a fiduciary's access under this~~
9 ~~chapter to a digital asset does not violate a terms of service~~
10 ~~agreement, notwithstanding a provision of the agreement that~~
11 ~~limits third party access or requires notice of change in the~~
12 ~~account holder's status.~~

13 ~~(e) Tangible personal property. As to tangible personal~~
14 ~~property capable of receiving, storing, processing or sending a~~
15 ~~digital asset, a fiduciary with authority over the property of a~~
16 ~~decedent, protected person, principal or settlor:~~

17 ~~(1) may access the property and any digital asset stored~~
18 ~~in the property; and~~

19 ~~(2) is an authorized user for purposes of applicable~~
20 ~~computer fraud and unauthorized access laws, including 18~~
21 ~~Pa.C.S. § 7611(a)(1) and (2).~~

22 ~~§ 3907. Compliance.~~

23 ~~(a) Custodian. If a fiduciary with a right under this~~
24 ~~chapter to access a digital asset of an account holder complies~~
25 ~~with subsection (b), the custodian shall comply with the~~
26 ~~fiduciary's request in a record for:~~

27 ~~(1) access to the asset;~~

28 ~~(2) control of the asset; or~~

29 ~~(3) a copy of the asset to the extent permitted by~~
30 ~~copyright law.~~

1 ~~(b) Request. If a request under subsection (a) is made by:~~

2 ~~(1) a personal representative with a right of access~~
3 ~~under section 3902 (relating to access by personal~~
4 ~~representative to digital assets of decedent), the request~~
5 ~~must be accompanied by a certified copy of the letter of~~
6 ~~appointment of the representative or a small estate affidavit~~
7 ~~or court order;~~

8 ~~(2) a conservator with the right of access under section~~
9 ~~3903 (relating to access by conservator to digital assets of~~
10 ~~protected person), the request must be accompanied by a~~
11 ~~certified copy of the court order that gives the conservator~~
12 ~~authority over the digital asset;~~

13 ~~(3) an agent with the right of access under section 3904~~
14 ~~(relating to access by agent to digital assets of principal),~~
15 ~~the request must be accompanied by an original or a copy of~~
16 ~~the power of attorney that authorizes the agent to exercise~~
17 ~~authority over the digital asset and a certification of the~~
18 ~~agent, under penalty of perjury, that the power of attorney~~
19 ~~is in effect; and~~

20 ~~(4) a trustee with the right of access under section~~
21 ~~3905 (relating to access by trustee to digital assets), the~~
22 ~~request must be accompanied by a certified copy of the trust~~
23 ~~instrument or a certification of the trust under section~~
24 ~~7790.3 (relating to certification of trust — UTC 1013), that~~
25 ~~authorizes the trustee to exercise authority over the digital~~
26 ~~asset.~~

27 ~~(c) Custodian. A custodian shall comply with a request made~~
28 ~~under subsection (a) not later than 15 days after receipt. If~~
29 ~~the custodian fails to comply, the fiduciary may apply to the~~
30 ~~court for an order directing compliance.~~

1 ~~(d) Trustee. Instead of furnishing a copy of the trust~~
2 ~~instrument under subsection (b) (4), the trustee may provide the~~
3 ~~certification of trust. The certification:~~

4 ~~(1) must contain the following information:~~

5 ~~(i) that the trust exists and the date the trust~~
6 ~~instrument was executed;~~

7 ~~(ii) the identity of the settlor;~~

8 ~~(iii) the identity and address of the trustee;~~

9 ~~(iv) that there is nothing inconsistent in the trust~~
10 ~~with respect to the trustee's powers over digital assets;~~

11 ~~(v) whether the trust is revocable and the identity~~
12 ~~of any person holding a power to revoke the trust; and~~

13 ~~(vi) whether a cotrustee has authority to sign or~~
14 ~~otherwise authenticate and whether all or fewer than all~~
15 ~~cotrustees are required to exercise powers of the~~
16 ~~trustee;~~

17 ~~(2) must be signed or otherwise authenticated by a~~
18 ~~trustee;~~

19 ~~(3) must state that the trust has not been revoked,~~
20 ~~modified or amended in a manner that would cause the~~
21 ~~representations contained in the certification of trust to be~~
22 ~~incorrect; and~~

23 ~~(4) need not contain the dispositive terms of the trust.~~

24 ~~(e) Trust documents. A custodian that receives a~~
25 ~~certification of trust under subsection (d) may require the~~
26 ~~trustee to provide copies of excerpts from the original trust~~
27 ~~instrument and later amendments that designate the trustee and~~
28 ~~confer on the trustee the power to act in the pending~~
29 ~~transaction.~~

30 ~~(f) Reliance on certification. The following apply:~~

1 ~~(1) A custodian that acts in reliance on a certification~~
2 ~~under subsection (d) without knowledge that the~~
3 ~~representations contained in the certification are incorrect~~
4 ~~is not liable to a person for the action and may assume~~
5 ~~without inquiry the existence of facts stated in the~~
6 ~~certification.~~

7 ~~(2) A person that in good faith enters into a~~
8 ~~transaction in reliance on a certification of trust under~~
9 ~~subsection (d) may enforce the transaction against the trust~~
10 ~~property as if the representations contained in the~~
11 ~~certification were correct.~~

12 ~~(g) Demand of trust instrument. A person that demands the~~
13 ~~trust instrument in addition to a certification of trust under~~
14 ~~subsection (d) or excerpts under subsection (e) is liable for~~
15 ~~damages if the court determines that the person did not act in~~
16 ~~good faith in demanding the trust instrument.~~

17 ~~(h) Copy of trust instrument. This section does not limit~~
18 ~~the right of a person to obtain a copy of a trust instrument in~~
19 ~~a judicial proceeding concerning the trust.~~

20 ~~§ 3908. Custodian immunity.~~

21 ~~A custodian and its officers, employees and agents are immune~~
22 ~~from liability for an act done in good faith in compliance with~~
23 ~~this chapter.~~

24 ~~§ 3909. Uniformity of application and construction.~~

25 ~~In applying and construing this chapter that is based on the~~
26 ~~uniform act, consideration must be given to the need to promote~~
27 ~~uniformity of the law with respect to its subject matter among~~
28 ~~states that enact it.~~

29 ~~§ 3910. Relation to Electronic Signatures in Global and~~
30 ~~National Commerce Act.~~

1 ~~To the extent permitted by section 102 of the Electronic~~
2 ~~Signatures in Global and National Commerce Act (Public Law 106-~~
3 ~~229, 15 U.S.C. § 7001 et seq.) this chapter may modify, limit or~~
4 ~~supersede provisions of that act, but does not:~~

5 ~~(1) modify, limit or supersede section 101(c) of the~~
6 ~~Electronic Signatures in Global and National Commerce Act; or~~
7 ~~(2) authorize electronic delivery of a notice described~~
8 ~~in section 103(b) of the Electronic Signatures in Global and~~
9 ~~National Commerce Act.~~

10 ~~§ 3911. Applicability.~~

11 ~~(a) Applicability. Subject to subsection (b), this chapter~~
12 ~~applies to:~~

13 ~~(1) a fiduciary or agent acting under a will or power of~~
14 ~~attorney executed before, on or after the effective date of~~
15 ~~this chapter;~~

16 ~~(2) a personal representative acting for a decedent who~~
17 ~~died before, on or after the effective date of this chapter;~~

18 ~~(3) a conservatorship proceeding, whether pending in a~~
19 ~~court or commenced before, on or after the effective date of~~
20 ~~this chapter; and~~

21 ~~(4) a trustee acting under a trust created before, on or~~
22 ~~after the effective date of this chapter.~~

23 ~~(b) Employers. This chapter does not apply to a digital~~
24 ~~asset of an employer used by an employee in the ordinary course~~
25 ~~of the employer's business.~~

26 UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS

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27 SEC.

28 3901. SHORT TITLE OF CHAPTER.

29 3902. DEFINITIONS.

30 3903. APPLICABILITY.

1 3904. USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.
2 3905. TERMS-OF-SERVICE AGREEMENT.
3 3906. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.
4 3907. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF
5 DECEASED USER.
6 3908. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED USER.
7 3909. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF
8 PRINCIPAL.
9 3910. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL.
10 3911. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE
11 IS ORIGINAL USER.
12 3912. DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD
13 IN TRUST WHEN TRUSTEE NOT ORIGINAL USER.
14 3913. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN
15 TRUSTEE NOT ORIGINAL USER.
16 3914. DISCLOSURE OF DIGITAL ASSETS TO CONSERVATOR OF PROTECTED
17 PERSON.
18 3915. FIDUCIARY DUTY AND AUTHORITY.
19 3916. CUSTODIAN COMPLIANCE AND IMMUNITY.
20 3917. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
21 3918. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
22 COMMERCE ACT.
23 § 3901. SHORT TITLE OF CHAPTER.
24 THIS CHAPTER MAY BE CITED AS THE REVISED UNIFORM FIDUCIARY
25 ACCESS TO DIGITAL ASSETS ACT (2015).
26 § 3902. DEFINITIONS.
27 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
28 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
29 CONTEXT CLEARLY INDICATES OTHERWISE:
30 "ACCOUNT." AN ARRANGEMENT UNDER A TERMS-OF-SERVICE AGREEMENT

1 IN WHICH A CUSTODIAN:

2 (1) CARRIES, MAINTAINS, PROCESSES, RECEIVES OR STORES A
3 DIGITAL ASSET OF THE USER; OR

4 (2) PROVIDES GOODS OR SERVICES TO THE USER.

5 "AGENT." AN ATTORNEY-IN-FACT GRANTED AUTHORITY UNDER A
6 DURABLE OR NONDURABLE POWER OF ATTORNEY.

7 "CARRIES." ENGAGES IN THE TRANSMISSION OF AN ELECTRONIC
8 COMMUNICATION.

9 "CATALOG OF ELECTRONIC COMMUNICATIONS." INFORMATION WHICH
10 IDENTIFIES:

11 (1) EACH PERSON THAT HAS HAD AN ELECTRONIC COMMUNICATION
12 WITH A USER;

13 (2) THE TIME AND DATE OF THE ELECTRONIC COMMUNICATION;
14 AND

15 (3) THE ELECTRONIC ADDRESS OF THE PERSON UNDER PARAGRAPH
16 (1).

17 "CONSERVATOR." A PERSON APPOINTED BY A COURT TO MANAGE THE
18 ESTATE OF A LIVING INDIVIDUAL. THE TERM INCLUDES A LIMITED
19 CONSERVATOR.

20 "CONTENT OF AN ELECTRONIC COMMUNICATION." INFORMATION
21 CONCERNING THE SUBSTANCE OR MEANING OF THE ELECTRONIC
22 COMMUNICATION WHICH:

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

24 (2) IS IN ELECTRONIC STORAGE BY A CUSTODIAN PROVIDING AN
25 ELECTRONIC COMMUNICATION SERVICE TO THE PUBLIC OR IS CARRIED
26 OR MAINTAINED BY A CUSTODIAN PROVIDING A REMOTE COMPUTING
27 SERVICE TO THE PUBLIC; AND

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

29 "COURT." THE COURT OF COMMON PLEAS EXERCISING THE
30 JURISDICTION REFERRED TO IN THIS TITLE THROUGH ITS ORPHANS'

1 COURT DIVISION.

2 "CUSTODIAN." A PERSON THAT CARRIES, MAINTAINS, PROCESSES,
3 RECEIVES OR STORES A DIGITAL ASSET OF A USER.

4 "DESIGNATED RECIPIENT." A PERSON CHOSEN BY A USER USING AN
5 ONLINE TOOL TO ADMINISTER DIGITAL ASSETS OF THE USER.

6 "DIGITAL ASSET." AN ELECTRONIC RECORD IN WHICH AN INDIVIDUAL
7 HAS A RIGHT OR INTEREST. THE TERM DOES NOT INCLUDE AN UNDERLYING
8 ASSET OR LIABILITY UNLESS THE ASSET OR LIABILITY IS ITSELF AN
9 ELECTRONIC RECORD.

10 "ELECTRONIC." RELATING TO TECHNOLOGY HAVING ELECTRICAL,
11 DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC OR SIMILAR
12 CAPABILITIES.

13 "ELECTRONIC COMMUNICATION." AS DEFINED IN 18 U.S.C. §
14 2510(12) (RELATING TO DEFINITIONS).

15 "ELECTRONIC COMMUNICATIONS SYSTEM." AS DEFINED IN 18 U.S.C.
16 § 2510(14).

17 "ELECTRONIC COMMUNICATION SERVICE." A CUSTODIAN THAT
18 PROVIDES TO A USER THE ABILITY TO SEND OR RECEIVE AN ELECTRONIC
19 COMMUNICATION.

20 "FIDUCIARY." ANY ORIGINAL, ADDITIONAL OR SUCCESSOR PERSONAL
21 REPRESENTATIVE, CONSERVATOR, AGENT OR TRUSTEE.

22 "INFORMATION." DATA, TEXT, IMAGES, VIDEOS, SOUNDS, CODES,
23 COMPUTER PROGRAMS, SOFTWARE, DATABASES OR THE LIKE.

24 "ONLINE TOOL." AN ELECTRONIC SERVICE PROVIDED BY A CUSTODIAN
25 WHICH ALLOWS THE USER, IN AN AGREEMENT DISTINCT FROM THE TERMS-
26 OF-SERVICE AGREEMENT BETWEEN THE CUSTODIAN AND USER, TO PROVIDE
27 DIRECTIONS FOR DISCLOSURE OR NONDISCLOSURE OF DIGITAL ASSETS TO
28 A THIRD PERSON.

29 "PERSON." ANY INDIVIDUAL; ESTATE; BUSINESS OR NONPROFIT
30 ENTITY; PUBLIC CORPORATION; GOVERNMENT OR GOVERNMENTAL

1 SUBDIVISION, AGENCY OR INSTRUMENTALITY; OR OTHER LEGAL ENTITY.

2 "PERSONAL REPRESENTATIVE." ANY OF THE FOLLOWING:

3 (1) AN EXECUTOR, AN ADMINISTRATOR OR A SPECIAL
4 ADMINISTRATOR.

5 (2) A PERSON THAT PERFORMS SUBSTANTIALLY THE SAME
6 FUNCTION AS A PERSON SPECIFIED IN PARAGRAPH (1) UNDER THE
7 LAWS OF THIS COMMONWEALTH OTHER THAN THIS CHAPTER.

8 "POWER OF ATTORNEY." A RECORD WHICH GRANTS AN AGENT
9 AUTHORITY TO ACT IN THE PLACE OF A PRINCIPAL.

10 "PRINCIPAL." AN INDIVIDUAL WHO GRANTS AUTHORITY TO AN AGENT
11 IN A POWER OF ATTORNEY.

12 "PROTECTED PERSON." AN INDIVIDUAL FOR WHOM A CONSERVATOR HAS
13 BEEN APPOINTED. THE TERM INCLUDES AN INDIVIDUAL FOR WHOM AN
14 APPLICATION FOR THE APPOINTMENT OF A CONSERVATOR IS PENDING.

15 "RECORD." INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM
16 OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS
17 RETRIEVABLE IN PERCEIVABLE FORM.

18 "REMOTE COMPUTING SERVICE." A CUSTODIAN THAT PROVIDES TO A
19 USER COMPUTER-PROCESSING SERVICES OR THE STORAGE OF DIGITAL
20 ASSETS BY MEANS OF AN ELECTRONIC COMMUNICATIONS SYSTEM.

21 "TERMS-OF-SERVICE AGREEMENT." AN AGREEMENT WHICH CONTROLS
22 THE RELATIONSHIP BETWEEN A USER AND A CUSTODIAN.

23 "TRUSTEE." A FIDUCIARY WITH LEGAL TITLE TO PROPERTY UNDER AN
24 AGREEMENT OR DECLARATION WHICH CREATES A BENEFICIAL INTEREST IN
25 ANOTHER. THE TERM INCLUDES A SUCCESSOR TRUSTEE.

26 "USER." A PERSON THAT HAS AN ACCOUNT WITH A CUSTODIAN.

27 "WILL." INCLUDES:

28 (1) A CODICIL;

29 (2) A TESTAMENTARY INSTRUMENT WHICH ONLY APPOINTS AN
30 EXECUTOR; AND

1 (3) AN INSTRUMENT WHICH REVOKES OR REVISES A
2 TESTAMENTARY INSTRUMENT.

3 § 3903. APPLICABILITY.

4 (A) TIME.--THIS CHAPTER APPLIES TO:

5 (1) A FIDUCIARY ACTING UNDER A WILL OR POWER OF ATTORNEY
6 EXECUTED BEFORE, ON OR AFTER THE EFFECTIVE DATE OF THIS
7 SECTION;

8 (2) A PERSONAL REPRESENTATIVE ACTING FOR A DECEDENT WHO
9 DIED BEFORE, ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION;

10 (3) A CONSERVATORSHIP PROCEEDING COMMENCED BEFORE, ON OR
11 AFTER THE EFFECTIVE DATE OF THIS SECTION; AND

12 (4) A TRUSTEE ACTING UNDER A TRUST CREATED BEFORE, ON OR
13 AFTER THE EFFECTIVE DATE OF THIS SECTION.

14 (B) RESIDENCE OF USER.--THIS CHAPTER APPLIES TO A CUSTODIAN
15 IF THE USER RESIDES IN THIS COMMONWEALTH OR RESIDED IN THIS
16 COMMONWEALTH AT THE TIME OF THE USER'S DEATH.

17 (C) EMPLOYERS.--THIS CHAPTER DOES NOT APPLY TO A DIGITAL
18 ASSET OF AN EMPLOYER USED BY AN EMPLOYEE IN THE ORDINARY COURSE
19 OF THE EMPLOYER'S BUSINESS.

20 § 3904. USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.

21 (A) USE OF ONLINE TOOL.--

22 (1) A USER MAY USE AN ONLINE TOOL TO DIRECT THE
23 CUSTODIAN TO DISCLOSE OR NOT TO DISCLOSE SOME OR ALL OF THE
24 USER'S DIGITAL ASSETS, INCLUDING THE CONTENT OF ELECTRONIC
25 COMMUNICATIONS.

26 (2) IF THE ONLINE TOOL ALLOWS THE USER TO MODIFY OR
27 DELETE A DIRECTION AT ALL TIMES, A DIRECTION REGARDING
28 DISCLOSURE USING AN ONLINE TOOL OVERRIDES A CONTRARY
29 DIRECTION BY THE USER IN A WILL, TRUST, POWER OF ATTORNEY OR
30 OTHER RECORD.

1 (B) NONUSE OF ONLINE TOOL.--IF A USER HAS NOT USED AN ONLINE
2 TOOL TO GIVE DIRECTION UNDER SUBSECTION (A) OR IF THE CUSTODIAN
3 HAS NOT PROVIDED AN ONLINE TOOL, THE USER MAY, IN A WILL, TRUST,
4 POWER OF ATTORNEY OR OTHER RECORD, ALLOW OR PERMIT DISCLOSURE TO
5 A FIDUCIARY OF SOME OR ALL OF THE USER'S DIGITAL ASSETS,
6 INCLUDING THE CONTENT OF ELECTRONIC COMMUNICATIONS SENT OR
7 RECEIVED BY THE USER.

8 (C) USER'S DIRECTION.--A USER'S DIRECTION UNDER SUBSECTION
9 (A) OR (B) OVERRIDES A CONTRARY PROVISION IN A TERMS-OF-SERVICE
10 AGREEMENT WHICH DOES NOT REQUIRE THE USER TO ACT AFFIRMATIVELY
11 AND DISTINCTLY FROM THE USER'S ASSENT TO THE TERMS OF SERVICE.
12 § 3905. TERMS-OF-SERVICE AGREEMENT.

13 (A) ALTERATION OF RIGHTS UNDER THIS CHAPTER.--THIS CHAPTER
14 DOES NOT CHANGE OR IMPAIR A RIGHT OF A CUSTODIAN OR A USER UNDER
15 A TERMS-OF-SERVICE AGREEMENT TO ACCESS AND USE DIGITAL ASSETS OF
16 THE USER.

17 (B) ADDITIONAL RIGHTS UNDER THIS CHAPTER.--THIS CHAPTER DOES
18 NOT GIVE A FIDUCIARY ANY NEW OR EXPANDED RIGHTS OTHER THAN THOSE
19 HELD BY THE USER FOR WHOM, OR FOR WHOSE ESTATE, THE FIDUCIARY
20 ACTS OR REPRESENTS.

21 (C) ABSENCE OF DIRECTION.--A FIDUCIARY'S ACCESS TO DIGITAL
22 ASSETS MAY BE MODIFIED OR ELIMINATED BY A USER, BY FEDERAL LAW,
23 OR BY A TERMS-OF-SERVICE AGREEMENT IF THE USER HAS NOT PROVIDED
24 DIRECTION UNDER SECTION 3904 (RELATING TO USER DIRECTION FOR
25 DISCLOSURE OF DIGITAL ASSETS).

26 § 3906. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.

27 (A) AUTHORITY OF CUSTODIAN.--WHEN DISCLOSING DIGITAL ASSETS
28 OF A USER UNDER THIS CHAPTER, THE CUSTODIAN HAS THE SOLE
29 DISCRETION TO:

30 (1) GRANT A FIDUCIARY OR DESIGNATED RECIPIENT FULL

1 ACCESS TO THE USER'S ACCOUNT;

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

6 (3) PROVIDE A FIDUCIARY OR DESIGNATED RECIPIENT A COPY
7 IN A RECORD OF ANY DIGITAL ASSET WHICH, ON THE DATE THE
8 CUSTODIAN RECEIVED THE REQUEST FOR DISCLOSURE, THE USER COULD
9 HAVE ACCESSED IF THE USER WERE ALIVE AND HAD FULL CAPACITY
10 AND ACCESS TO THE ACCOUNT.

11 (B) CHARGE.--A CUSTODIAN MAY ASSESS A REASONABLE
12 ADMINISTRATIVE CHARGE FOR THE COST OF DISCLOSING DIGITAL ASSETS
13 UNDER THIS CHAPTER.

14 (C) DELETED DIGITAL ASSETS.--A CUSTODIAN NEED NOT DISCLOSE
15 UNDER THIS CHAPTER A DIGITAL ASSET DELETED BY A USER.

16 (D) SEGREGATION.--IF A USER DIRECTS OR A FIDUCIARY REQUESTS
17 A CUSTODIAN TO DISCLOSE UNDER THIS CHAPTER SOME, BUT NOT ALL, OF
18 THE USER'S DIGITAL ASSETS, THE CUSTODIAN NEED NOT DISCLOSE THE
19 DIGITAL ASSETS IF SEGREGATION OF THE DIGITAL ASSETS WOULD IMPOSE
20 AN UNDUE BURDEN ON THE CUSTODIAN. IF THE CUSTODIAN BELIEVES THE
21 DIRECTION OR REQUEST IMPOSES AN UNDUE BURDEN, THE CUSTODIAN OR
22 FIDUCIARY MAY SEEK AN ORDER FROM THE COURT TO DO ANY OF THE
23 FOLLOWING:

24 (1) DISCLOSE A SUBSET LIMITED BY DATE OF THE USER'S
25 DIGITAL ASSETS.

26 (2) DISCLOSE ALL OF THE USER'S DIGITAL ASSETS TO THE
27 FIDUCIARY OR DESIGNATED RECIPIENT.

28 (3) DISCLOSE NONE OF THE USER'S DIGITAL ASSETS.

29 (4) DISCLOSE ALL OF THE USER'S DIGITAL ASSETS TO THE
30 COURT FOR REVIEW IN CAMERA.

1 § 3907. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF
2 DECEASED USER.

3 IF A DECEASED USER CONSENTED OR A COURT DIRECTS DISCLOSURE OF
4 THE CONTENT OF ELECTRONIC COMMUNICATIONS OF THE USER, THE
5 CUSTODIAN SHALL DISCLOSE TO THE PERSONAL REPRESENTATIVE OF THE
6 ESTATE OF THE USER THE CONTENT OF AN ELECTRONIC COMMUNICATION
7 SENT OR RECEIVED BY THE USER IF THE PERSONAL REPRESENTATIVE
8 GIVES THE CUSTODIAN:

9 (1) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR
10 ELECTRONIC FORM;

11 (2) A CERTIFIED COPY OF THE DEATH CERTIFICATE OF THE
12 USER;

13 (3) A CERTIFIED COPY OF THE LETTERS;

14 (4) UNLESS THE USER PROVIDED DIRECTION USING AN ONLINE
15 TOOL, A COPY OF THE USER'S WILL, TRUST, POWER OF ATTORNEY OR
16 OTHER RECORD EVIDENCING THE USER'S CONSENT TO DISCLOSURE OF
17 THE CONTENT OF ELECTRONIC COMMUNICATIONS; AND

18 (5) IF REQUESTED BY THE CUSTODIAN:

19 (I) ANY NUMBER, USERNAME, ADDRESS OR OTHER UNIQUE
20 SUBSCRIBER OR ACCOUNT IDENTIFIER, ASSIGNED BY THE
21 CUSTODIAN TO IDENTIFY THE USER'S ACCOUNT;

22 (II) EVIDENCE LINKING THE ACCOUNT TO THE USER; OR

23 (III) A FINDING BY THE COURT THAT:

24 (A) THE USER HAD A SPECIFIC ACCOUNT WITH THE
25 CUSTODIAN, IDENTIFIABLE BY THE INFORMATION SPECIFIED
26 IN SUBPARAGRAPH (I);

27 (B) DISCLOSURE OF THE CONTENT OF ELECTRONIC
28 COMMUNICATIONS OF THE USER WOULD NOT VIOLATE 18
29 U.S.C. § 2701 (RELATING TO UNLAWFUL ACCESS TO STORED
30 COMMUNICATIONS) ET SEQ., SECTION 222 OF THE

1 COMMUNICATIONS ACT OF 1934 (47 U.S.C. § 222) OR OTHER
2 APPLICABLE LAW;

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

6 (D) DISCLOSURE OF THE CONTENT OF ELECTRONIC
7 COMMUNICATIONS OF THE USER IS REASONABLY NECESSARY
8 FOR ADMINISTRATION OF THE ESTATE.

9 § 3908. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED USER.

10 UNLESS THE USER PROHIBITED DISCLOSURE OF DIGITAL ASSETS OR
11 THE COURT DIRECTS OTHERWISE, A CUSTODIAN SHALL DISCLOSE TO THE
12 PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED USER A
13 CATALOG OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY THE
14 USER AND DIGITAL ASSETS, OTHER THAN THE CONTENT OF ELECTRONIC
15 COMMUNICATIONS, OF THE USER, IF THE PERSONAL REPRESENTATIVE
16 GIVES THE CUSTODIAN:

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

19 (2) A CERTIFIED COPY OF THE DEATH CERTIFICATE OF THE
20 USER;

21 (3) A CERTIFIED COPY OF THE LETTERS; AND

22 (4) IF REQUESTED BY THE CUSTODIAN:

23 (I) ANY NUMBER, USERNAME, ADDRESS OR OTHER UNIQUE
24 SUBSCRIBER OR ACCOUNT IDENTIFIER, ASSIGNED BY THE
25 CUSTODIAN TO IDENTIFY THE USER'S ACCOUNT;

26 (II) EVIDENCE LINKING THE ACCOUNT TO THE USER;

27 (III) AN AFFIDAVIT STATING THAT DISCLOSURE OF THE
28 USER'S DIGITAL ASSETS IS REASONABLY NECESSARY FOR
29 ADMINISTRATION OF THE ESTATE; OR

30 (IV) A FINDING BY THE COURT THAT:

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

4 (B) DISCLOSURE OF THE USER'S DIGITAL ASSETS IS
5 REASONABLY NECESSARY FOR ADMINISTRATION OF THE
6 ESTATE.

7 § 3909. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF
8 PRINCIPAL.

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

15 (1) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR
16 ELECTRONIC FORM;

17 (2) AN ORIGINAL OR A COPY OF THE POWER OF ATTORNEY
18 EXPRESSLY GRANTING THE AGENT AUTHORITY OVER THE CONTENT OF
19 ELECTRONIC COMMUNICATIONS OF THE PRINCIPAL;

20 (3) A CERTIFICATION BY THE AGENT, UNDER PENALTY OF
21 PERJURY, THAT THE POWER OF ATTORNEY IS IN EFFECT; AND

22 (4) IF REQUESTED BY THE CUSTODIAN:

23 (I) ANY NUMBER, USERNAME, ADDRESS OR OTHER UNIQUE
24 SUBSCRIBER OR ACCOUNT IDENTIFIER, ASSIGNED BY THE
25 CUSTODIAN TO IDENTIFY THE PRINCIPAL'S ACCOUNT; OR

26 (II) EVIDENCE LINKING THE ACCOUNT TO THE PRINCIPAL.

27 § 3910. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL.

28 UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE
29 PRINCIPAL OR PROVIDED BY A POWER OF ATTORNEY, A CUSTODIAN SHALL
30 DISCLOSE TO AN AGENT WITH SPECIFIC AUTHORITY OVER DIGITAL ASSETS

1 OR GENERAL AUTHORITY TO ACT ON BEHALF OF A PRINCIPAL A CATALOG
2 OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY THE PRINCIPAL
3 AND DIGITAL ASSETS, OTHER THAN THE CONTENT OF ELECTRONIC
4 COMMUNICATIONS, OF THE PRINCIPAL IF THE AGENT GIVES THE
5 CUSTODIAN:

6 (1) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR
7 ELECTRONIC FORM;

8 (2) AN ORIGINAL OR A COPY OF THE POWER OF ATTORNEY THAT
9 GIVES THE AGENT SPECIFIC AUTHORITY OVER DIGITAL ASSETS OR
10 GENERAL AUTHORITY TO ACT ON BEHALF OF THE PRINCIPAL;

11 (3) A CERTIFICATION BY THE AGENT, UNDER PENALTY OF
12 PERJURY, THAT THE POWER OF ATTORNEY IS IN EFFECT; AND

13 (4) IF REQUESTED BY THE CUSTODIAN:

14 (A) ANY NUMBER, USERNAME, ADDRESS OR OTHER
15 UNIQUE SUBSCRIBER OR ACCOUNT IDENTIFIER, ASSIGNED BY
16 THE CUSTODIAN TO IDENTIFY THE PRINCIPAL'S ACCOUNT; OR

17 (B) EVIDENCE LINKING THE ACCOUNT TO THE
18 PRINCIPAL.

19 § 3911. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE
20 IS ORIGINAL USER.

21 UNLESS OTHERWISE ORDERED BY THE COURT OR PROVIDED IN A TRUST,
22 A CUSTODIAN SHALL DISCLOSE TO A TRUSTEE THAT IS AN ORIGINAL USER
23 OF AN ACCOUNT ANY DIGITAL ASSET OF THE ACCOUNT HELD IN TRUST,
24 INCLUDING A CATALOG OF ELECTRONIC COMMUNICATIONS OF THE TRUSTEE
25 AND THE CONTENT OF ELECTRONIC COMMUNICATIONS.

26 § 3912. DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS
27 HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER.

28 UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE USER
29 OR PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE TO A TRUSTEE
30 THAT IS NOT AN ORIGINAL USER OF AN ACCOUNT THE CONTENT OF AN

1 ELECTRONIC COMMUNICATION SENT OR RECEIVED BY AN ORIGINAL OR
2 SUCCESSOR USER AND CARRIED, MAINTAINED, PROCESSED, RECEIVED OR
3 STORED BY THE CUSTODIAN IN THE ACCOUNT OF THE TRUST IF THE
4 TRUSTEE GIVES THE CUSTODIAN:

5 (1) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR
6 ELECTRONIC FORM;

7 (2) A CERTIFIED COPY OF THE TRUST INSTRUMENT OR A
8 CERTIFICATION OF THE TRUST UNDER SECTION 7790.3 (RELATING TO
9 CERTIFICATION OF TRUST - UTC 1013), WHICH INCLUDES CONSENT TO
10 DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS TO THE
11 TRUSTEE;

12 (3) A CERTIFICATION BY THE TRUSTEE, UNDER PENALTY OF
13 PERJURY, THAT THE TRUST EXISTS AND THE TRUSTEE IS A CURRENTLY
14 ACTING TRUSTEE OF THE TRUST; AND

15 (4) IF REQUESTED BY THE CUSTODIAN:

16 (I) ANY NUMBER, USERNAME, ADDRESS OR OTHER UNIQUE
17 SUBSCRIBER OR ACCOUNT IDENTIFIER, ASSIGNED BY THE
18 CUSTODIAN TO IDENTIFY THE TRUST'S ACCOUNT; OR

19 (II) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

20 § 3913. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN
21 TRUSTEE NOT ORIGINAL USER.

22 UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE USER
23 OR PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE TO A TRUSTEE
24 THAT IS NOT AN ORIGINAL USER OF AN ACCOUNT A CATALOG OF
25 ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY AN ORIGINAL OR
26 SUCCESSOR USER AND STORED, CARRIED OR MAINTAINED BY THE
27 CUSTODIAN IN AN ACCOUNT OF THE TRUST AND ANY DIGITAL ASSETS,
28 OTHER THAN THE CONTENT OF ELECTRONIC COMMUNICATIONS, IN WHICH
29 THE TRUST HAS A RIGHT OR INTEREST IF THE TRUSTEE GIVES THE
30 CUSTODIAN:

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

3 (2) A CERTIFIED COPY OF THE TRUST INSTRUMENT OR A
4 CERTIFICATION OF THE TRUST UNDER SECTION 7790.3 (RELATING TO
5 CERTIFICATION OF TRUST - UTC 1013);

6 (3) A CERTIFICATION BY THE TRUSTEE, UNDER PENALTY OF
7 PERJURY, THAT THE TRUST EXISTS AND THE TRUSTEE IS A CURRENTLY
8 ACTING TRUSTEE OF THE TRUST; AND

9 (4) IF REQUESTED BY THE CUSTODIAN:

10 (I) ANY NUMBER, USERNAME, ADDRESS OR OTHER UNIQUE
11 SUBSCRIBER OR ACCOUNT IDENTIFIER, ASSIGNED BY THE
12 CUSTODIAN TO IDENTIFY THE TRUST'S ACCOUNT; OR

13 (II) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

14 § 3914. DISCLOSURE OF DIGITAL ASSETS TO CONSERVATOR OF
15 PROTECTED PERSON.

16 (A) ACCESS.--AFTER AN OPPORTUNITY FOR A HEARING, THE COURT
17 MAY GRANT A CONSERVATOR ACCESS TO THE DIGITAL ASSETS OF A
18 PROTECTED PERSON.

19 (B) DISCLOSURE.--UNLESS OTHERWISE ORDERED BY THE COURT OR
20 DIRECTED BY THE USER, A CUSTODIAN SHALL DISCLOSE TO A
21 CONSERVATOR THE CATALOG OF ELECTRONIC COMMUNICATIONS SENT OR
22 RECEIVED BY THE PROTECTED PERSON AND ANY DIGITAL ASSETS, OTHER
23 THAN THE CONTENT OF ELECTRONIC COMMUNICATIONS, IN WHICH THE
24 PROTECTED PERSON HAS A RIGHT OR INTEREST IF THE CONSERVATOR
25 GIVES THE CUSTODIAN:

26 (1) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR
27 ELECTRONIC FORM;

28 (2) A CERTIFIED COPY OF THE COURT ORDER THAT GIVES THE
29 CONSERVATOR AUTHORITY OVER THE DIGITAL ASSETS OF THE
30 PROTECTED PERSON; AND

1 (3) IF REQUESTED BY THE CUSTODIAN:

2 (I) ANY NUMBER, USERNAME, ADDRESS OR OTHER UNIQUE
3 SUBSCRIBER OR ACCOUNT IDENTIFIER, ASSIGNED BY THE
4 CUSTODIAN TO IDENTIFY THE ACCOUNT OF THE PROTECTED
5 PERSON; OR

6 (II) EVIDENCE LINKING THE ACCOUNT TO THE PROTECTED
7 PERSON.

8 (C) ACCOUNT ACTIVITY.--A CONSERVATOR WITH GENERAL AUTHORITY
9 TO MANAGE THE ASSETS OF A PROTECTED PERSON MAY REQUEST A
10 CUSTODIAN OF THE DIGITAL ASSETS OF THE PROTECTED PERSON TO
11 SUSPEND OR TERMINATE AN ACCOUNT OF THE PROTECTED PERSON FOR GOOD
12 CAUSE. A REQUEST MADE UNDER THIS SUBSECTION MUST BE ACCOMPANIED
13 BY A CERTIFIED COPY OF THE COURT ORDER GIVING THE CONSERVATOR
14 AUTHORITY OVER THE PROTECTED PERSON'S PROPERTY.

15 § 3915. FIDUCIARY DUTY AND AUTHORITY.

16 (A) DUTIES.--THE LEGAL DUTIES IMPOSED ON A FIDUCIARY CHARGED
17 WITH MANAGING TANGIBLE PROPERTY APPLY TO THE MANAGEMENT OF
18 DIGITAL ASSETS, INCLUDING:

19 (1) THE DUTY OF CARE;

20 (2) THE DUTY OF LOYALTY; AND

21 (3) THE DUTY OF CONFIDENTIALITY.

22 (B) AUTHORITY.--A FIDUCIARY'S AUTHORITY WITH RESPECT TO A
23 DIGITAL ASSET OF A USER:

24 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 3904
25 (RELATING TO USER DIRECTION FOR DISCLOSURE OF DIGITAL
26 ASSETS), IS SUBJECT TO THE APPLICABLE TERMS OF SERVICE;

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

29 (3) IS LIMITED BY THE SCOPE OF THE FIDUCIARY'S DUTIES;

30 AND

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

2 (C) ACCESS.--A FIDUCIARY WITH AUTHORITY OVER THE PROPERTY OF
3 A DECEDENT, PROTECTED PERSON, PRINCIPAL OR SETTLOR HAS THE RIGHT
4 TO ACCESS ANY DIGITAL ASSET:

5 (1) IN WHICH THE DECEDENT, PROTECTED PERSON, PRINCIPAL
6 OR SETTLOR HAD A RIGHT OR INTEREST; AND

7 (2) WHICH IS NOT HELD BY A CUSTODIAN OR SUBJECT TO A
8 TERMS-OF-SERVICE AGREEMENT.

9 (D) AUTHORIZED USER.--A FIDUCIARY ACTING WITHIN THE SCOPE OF
10 THE FIDUCIARY'S DUTIES IS AN AUTHORIZED USER OF THE PROPERTY OF
11 THE DECEDENT, PROTECTED PERSON, PRINCIPAL OR SETTLOR FOR THE
12 PURPOSE OF APPLICABLE COMPUTER FRAUD AND UNAUTHORIZED COMPUTER
13 ACCESS LAWS, INCLUDING 18 PA.C.S. CH. 76 (RELATING TO COMPUTER
14 OFFENSES).

15 (E) TANGIBLE, PERSONAL PROPERTY.--A FIDUCIARY WITH AUTHORITY
16 OVER THE TANGIBLE, PERSONAL PROPERTY OF A DECEDENT, PROTECTED
17 PERSON, PRINCIPAL OR SETTLOR:

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

20 (2) IS AN AUTHORIZED USER FOR THE PURPOSE OF COMPUTER
21 FRAUD AND UNAUTHORIZED COMPUTER ACCESS LAWS, INCLUDING 18
22 PA.C.S. CH. 76.

23 (F) DISCLOSURE BY CUSTODIAN.--A CUSTODIAN MAY DISCLOSE
24 INFORMATION IN AN ACCOUNT TO A FIDUCIARY OF THE USER WHEN THE
25 INFORMATION IS REQUIRED TO TERMINATE AN ACCOUNT USED TO ACCESS
26 DIGITAL ASSETS LICENSED TO THE USER.

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

1 (1) IF THE USER IS DECEASED, A CERTIFIED COPY OF THE
2 DEATH CERTIFICATE OF THE USER;

3 (2) A CERTIFIED COPY OF THE LETTERS, COURT ORDER, POWER
4 OF ATTORNEY OR TRUST, GIVING THE FIDUCIARY AUTHORITY OVER THE
5 ACCOUNT; AND

6 (3) IF REQUESTED BY THE CUSTODIAN:

7 (I) ANY NUMBER, USERNAME, ADDRESS OR OTHER UNIQUE
8 SUBSCRIBER OR ACCOUNT IDENTIFIER, ASSIGNED BY THE
9 CUSTODIAN TO IDENTIFY THE USER'S ACCOUNT;

10 (II) EVIDENCE LINKING THE ACCOUNT TO THE USER; OR

11 (III) A FINDING BY THE COURT THAT THE USER HAD A
12 SPECIFIC ACCOUNT WITH THE CUSTODIAN, IDENTIFIABLE BY THE
13 INFORMATION SPECIFIED IN SUBPARAGRAPH (I).

14 § 3916. CUSTODIAN COMPLIANCE AND IMMUNITY.

15 (A) REQUIREMENT.--NOT LATER THAN 60 DAYS AFTER RECEIPT OF
16 THE INFORMATION REQUIRED UNDER SECTIONS 3907 (RELATING TO
17 DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF DECEASED
18 USER) THROUGH 3914 (RELATING TO DISCLOSURE OF DIGITAL ASSETS TO
19 CONSERVATOR OF PROTECTED PERSON), A CUSTODIAN SHALL COMPLY WITH
20 A REQUEST UNDER THIS CHAPTER FROM A FIDUCIARY OR DESIGNATED
21 RECIPIENT TO DISCLOSE DIGITAL ASSETS OR TERMINATE AN ACCOUNT.
22 IF THE CUSTODIAN FAILS TO COMPLY, THE FIDUCIARY OR DESIGNATED
23 REPRESENTATIVE MAY APPLY TO THE COURT FOR AN ORDER DIRECTING
24 COMPLIANCE.

25 (B) COURT ORDER.--AN ORDER UNDER SUBSECTION (A) DIRECTING
26 COMPLIANCE MUST CONTAIN A FINDING THAT COMPLIANCE IS NOT IN
27 VIOLATION OF 18 U.S.C. § 2702 (RELATING TO VOLUNTARY DISCLOSURE
28 OF CUSTOMER COMMUNICATIONS OR RECORDS).

29 (C) NOTIFICATION.--A CUSTODIAN MAY NOTIFY THE USER THAT A
30 REQUEST FOR DISCLOSURE OR TO TERMINATE AN ACCOUNT WAS MADE UNDER

1 THIS CHAPTER.

2 (D) LAWFUL ACCESS FOLLOWING TERMINATION REQUEST.--A
3 CUSTODIAN MAY DENY A REQUEST UNDER THIS CHAPTER FROM A FIDUCIARY
4 OR DESIGNATED REPRESENTATIVE FOR DISCLOSURE OF DIGITAL ASSETS OR
5 TO TERMINATE AN ACCOUNT IF THE CUSTODIAN IS AWARE OF ANY LAWFUL
6 ACCESS TO THE ACCOUNT FOLLOWING THE RECEIPT OF THE FIDUCIARY'S
7 REQUEST.

8 (E) ADDITIONAL COURT ORDERS.--THIS CHAPTER DOES NOT LIMIT A
9 CUSTODIAN'S ABILITY TO OBTAIN OR REQUIRE A FIDUCIARY OR
10 DESIGNATED REPRESENTATIVE REQUESTING DISCLOSURE OR TERMINATION
11 UNDER THIS CHAPTER TO OBTAIN A COURT ORDER WHICH:

12 (1) SPECIFIES THAT AN ACCOUNT BELONGS TO THE PROTECTED
13 PERSON OR PRINCIPAL;

14 (2) SPECIFIES THAT THERE IS SUFFICIENT CONSENT FROM THE
15 PROTECTED PERSON OR PRINCIPAL TO SUPPORT THE REQUESTED
16 DISCLOSURE; AND

17 (3) CONTAINS A FINDING REQUIRED BY LAW OTHER THAN THIS
18 CHAPTER.

19 (F) IMMUNITY.--A CUSTODIAN AND ITS OFFICERS, EMPLOYEES AND
20 AGENTS ARE IMMUNE FROM LIABILITY FOR AN ACT OR OMISSION DONE IN
21 GOOD FAITH IN COMPLIANCE WITH THIS CHAPTER.

22 § 3917. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

23 IN APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION
24 MUST BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH
25 RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

26 § 3918. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
27 NATIONAL COMMERCE ACT.

28 TO THE EXTENT PERMITTED BY SECTION 102 OF THE ELECTRONIC
29 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (PUBLIC LAW 106-
30 229, 15 U.S.C. § 7002), THIS CHAPTER MAY SUPERSEDE PROVISIONS OF

1 THAT ACT.

2 Section 2. This act shall take effect in 60 days.