Senate Engrossed House Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 199

HOUSE BILL 2467

AN ACT

AMENDING TITLE 14, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 13; RELATING TO FIDUCIARY ACCESS TO ELECTRONIC RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 14, Arizona Revised Statutes, is amended by adding chapter 13, to read:

CHAPTER 13

REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

ARTICLE 1. GENERAL PROVISIONS

14-13101. Short title

THIS CHAPTER MAY BE CITED AS THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.

14-13102. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

3. "CARRIES" MEANS ENGAGES IN THE TRANSMISSION OF AN ELECTRONIC COMMUNICATION.

4. "CATALOGUE OF ELECTRONIC COMMUNICATIONS" MEANS INFORMATION THAT IDENTIFIES EACH PERSON WITH WHICH A USER HAS HAD AN ELECTRONIC COMMUNICATION, THE TIME AND DATE OF THE COMMUNICATION AND THE ELECTRONIC ADDRESS OF THE PERSON.

5. "CONSERVATOR" MEANS A PERSON APPOINTED BY A COURT TO MANAGE THE ESTATE OF A LIVING INDIVIDUAL AND INCLUDES A LIMITED CONSERVATOR AND A FIDUCIARY AS DEFINED IN SECTION 14-5651, SUBSECTION K.

6. "CONTENT OF AN ELECTRONIC COMMUNICATION" MEANS INFORMATION CONCERNING THE SUBSTANCE OR MEANING OF THE COMMUNICATION THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:

(a) HAS BEEN SENT OR RECEIVED BY A USER.

(b) IS IN ELECTRONIC STORAGE BY A CUSTODIAN PROVIDING AN ELECTRONIC-COMMUNICATION SERVICE TO THE PUBLIC OR IS CARRIED OR MAINTAINED BY A CUSTODIAN PROVIDING A REMOTE-COMPUTING SERVICE TO THE PUBLIC.

(c) IS NOT READILY ACCESSIBLE TO THE PUBLIC.

7. "COURT" MEANS THE SUPERIOR COURT.

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

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

10. "DIGITAL ASSET" MEANS AN ELECTRONIC RECORD IN WHICH AN INDIVIDUAL HAS A RIGHT OR INTEREST. DIGITAL ASSET DOES NOT INCLUDE AN UNDERLYING ASSET OR LIABILITY UNLESS THE ASSET OR LIABILITY IS ITSELF AN ELECTRONIC RECORD.

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

12. "ELECTRONIC COMMUNICATION" HAS THE SAME MEANING PRESCRIBED IN 18 UNITED STATES CODE SECTION 2510(12).

13. "ELECTRONIC-COMMUNICATION SERVICE" MEANS A CUSTODIAN THAT PROVIDES TO A USER THE ABILITY TO SEND OR RECEIVE AN ELECTRONIC COMMUNICATION.

14. "FIDUCIARY" MEANS AN ORIGINAL, ADDITIONAL OR SUCCESSOR PERSONAL REPRESENTATIVE, CONSERVATOR, AGENT, TRUSTEE OR A FIDUCIARY AS DEFINED IN SECTION 14-5651, SUBSECTION K.

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

16. "ONLINE TOOL" MEANS AN ELECTRONIC SERVICE PROVIDED BY A CUSTODIAN THAT ALLOWS THE USER, IN AN AGREEMENT DISTINCT FROM THE TERMS-OF-SERVICE AGREEMENT BETWEEN THE CUSTODIAN AND USER, TO PROVIDE DIRECTIONS FOR DISCLOSURE OR NONDISCLOSURE OF DIGITAL ASSETS TO A THIRD PERSON.

17. "PERSON" MEANS AN INDIVIDUAL, AN ESTATE, A BUSINESS OR NONPROFIT ENTITY, A PUBLIC CORPORATION, A GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY OR INSTRUMENTALITY OR ANY OTHER LEGAL ENTITY.

18. "PERSONAL REPRESENTATIVE" MEANS AN EXECUTOR, AN ADMINISTRATOR, A SPECIAL ADMINISTRATOR OR PERSON THAT PERFORMS SUBSTANTIALLY THE SAME FUNCTION UNDER LAW OF THIS STATE OTHER THAN THIS CHAPTER.

19. "POWER OF ATTORNEY" MEANS A RECORD THAT GRANTS AN AGENT AUTHORITY TO ACT IN THE PLACE OF A PRINCIPAL.

20. "PRINCIPAL" MEANS AN INDIVIDUAL WHO GRANTS AUTHORITY TO AN AGENT IN A POWER OF ATTORNEY.

21. "PROTECTED PERSON" MEANS AN INDIVIDUAL FOR WHOM A CONSERVATOR HAS BEEN APPOINTED. PROTECTED PERSON INCLUDES AN INDIVIDUAL FOR WHOM AN APPLICATION FOR THE APPOINTMENT OF A CONSERVATOR IS PENDING.

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

23. "REMOTE-COMPUTING SERVICE" MEANS A CUSTODIAN THAT PROVIDES TO A USER COMPUTER-PROCESSING SERVICES OR THE STORAGE OF DIGITAL ASSETS BY MEANS OF AN ELECTRONIC COMMUNICATIONS SYSTEM, AS DEFINED IN 18 UNITED STATES CODE SECTION 2510(14).

24. "TERMS-OF-SERVICE AGREEMENT" MEANS AN AGREEMENT THAT CONTROLS THE RELATIONSHIP BETWEEN A USER AND A CUSTODIAN.

25. "TRUSTEE" MEANS A FIDUCIARY WITH LEGAL TITLE TO PROPERTY UNDER AN AGREEMENT OR DECLARATION THAT CREATES A BENEFICIAL INTEREST IN ANOTHER. TRUSTEE INCLUDES A SUCCESSOR TRUSTEE.

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

27. "WILL" INCLUDES A CODICIL, TESTAMENTARY INSTRUMENT THAT ONLY APPOINTS AN EXECUTOR AND INSTRUMENT THAT REVOKES OR REVISES A TESTAMENTARY INSTRUMENT.

14-13103. <u>Applicability</u>

A. THIS CHAPTER APPLIES TO ALL OF THE FOLLOWING:

1. A FIDUCIARY ACTING UNDER A WILL OR POWER OF ATTORNEY EXECUTED BEFORE, ON OR AFTER THE EFFECTIVE DATE OF THIS CHAPTER.

2. A PERSONAL REPRESENTATIVE ACTING FOR A DECEDENT WHO DIED BEFORE, ON OR AFTER THE EFFECTIVE DATE OF THIS CHAPTER.

3. A CONSERVATORSHIP PROCEEDING COMMENCED BEFORE, ON OR AFTER THE EFFECTIVE DATE OF THIS CHAPTER.

4. A TRUSTEE ACTING UNDER A TRUST CREATED BEFORE, ON OR AFTER THE EFFECTIVE DATE OF THIS CHAPTER.

B. THIS CHAPTER APPLIES TO A CUSTODIAN IF THE USER RESIDES IN THIS STATE OR RESIDED IN THIS STATE AT THE TIME OF THE USER'S DEATH.

C. THIS CHAPTER DOES NOT APPLY TO A DIGITAL ASSET OF AN EMPLOYER USED BY AN EMPLOYEE IN THE ORDINARY COURSE OF THE EMPLOYER'S BUSINESS.

14-13104. User direction for disclosure of digital assets

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

B. IF A USER HAS NOT USED AN ONLINE TOOL TO GIVE DIRECTION UNDER SUBSECTION A OF THIS SECTION OR IF THE CUSTODIAN HAS NOT PROVIDED AN ONLINE TOOL, THE USER MAY 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.

C. A USER'S DIRECTION UNDER SUBSECTION A OR B OF THIS SECTION OVERRIDES A CONTRARY PROVISION IN A TERMS-OF-SERVICE AGREEMENT THAT DOES NOT REQUIRE THE USER TO ACT AFFIRMATIVELY AND DISTINCTLY FROM THE USER'S ASSENT TO THE TERMS OF SERVICE.

14-13105. Terms-of-service agreement

A. THIS CHAPTER DOES NOT CHANGE OR IMPAIR A RIGHT OF A CUSTODIAN OR A USER UNDER A TERMS-OF-SERVICE AGREEMENT TO ACCESS AND USE DIGITAL ASSETS OF THE USER.

B. THIS CHAPTER DOES NOT 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.

C. A FIDUCIARY'S OR DESIGNATED RECIPIENT'S ACCESS TO DIGITAL ASSETS MAY BE MODIFIED OR ELIMINATED BY A USER, BY FEDERAL LAW OR BY A TERMS-OF-SERVICE AGREEMENT IF THE USER HAS NOT PROVIDED DIRECTION UNDER SECTION 14-13104.

14-13106. Procedure for disclosing digital assets

A. WHEN DISCLOSING DIGITAL ASSETS OF A USER UNDER THIS CHAPTER, THE CUSTODIAN MAY DO, AT ITS SOLE DISCRETION, 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.

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.

B. A CUSTODIAN MAY ASSESS A REASONABLE ADMINISTRATIVE CHARGE FOR THE COST OF DISCLOSING DIGITAL ASSETS UNDER THIS CHAPTER.

C. A CUSTODIAN NEED NOT DISCLOSE UNDER THIS CHAPTER A DIGITAL ASSET DELETED BY A USER.

D. IF A USER DIRECTS OR A FIDUCIARY REQUESTS A CUSTODIAN TO DISCLOSE UNDER THIS CHAPTER SOME, BUT NOT ALL, OF THE USER'S DIGITAL ASSETS, THE CUSTODIAN NEED NOT DISCLOSE THE ASSETS IF SEGREGATION OF THE ASSETS WOULD IMPOSE AN UNDUE BURDEN ON THE CUSTODIAN. IF THE CUSTODIAN BELIEVES THE DIRECTION OR REQUEST IMPOSES AN UNDUE BURDEN, THE CUSTODIAN OR FIDUCIARY MAY SEEK AN ORDER FROM THE COURT TO DISCLOSE ANY OF THE FOLLOWING:

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.

14-13107. <u>Disclosure of content of electronic communications of deceased user</u>

A. IF A DECEASED USER CONSENTED OR A COURT DIRECTS DISCLOSURE OF THE CONTENTS OF ELECTRONIC COMMUNICATIONS OF THE USER, THE CUSTODIAN SHALL DISCLOSE TO THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE USER THE CONTENT OF AN ELECTRONIC COMMUNICATION 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 LETTERS TESTAMENTARY, A SMALL-ESTATE AFFIDAVIT OR A COURT ORDER.

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.

5. IF REQUESTED BY THE CUSTODIAN, ANY OF THE FOLLOWING:

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

(b) EVIDENCE LINKING THE ACCOUNT TO THE USER.

(c) A FINDING BY THE COURT OF ONE OR MORE OF THE FOLLOWING:

(i) THE USER HAD A SPECIFIC ACCOUNT WITH THE CUSTODIAN, IDENTIFIABLE BY THE INFORMATION SPECIFIED IN SUBDIVISION (a) OF THIS PARAGRAPH.

(ii) DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS OF THE USER WOULD NOT VIOLATE 18 UNITED STATES CODE SECTIONS 2701 THROUGH 2712, 47 UNITED STATES CODE SECTION 222 OR OTHER APPLICABLE LAW.

(iii) UNLESS THE USER PROVIDED DIRECTION USING AN ONLINE TOOL, THE USER CONSENTED TO DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS.

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

14-13108. Disclosure of other digital assets of deceased user

UNLESS THE USER PROHIBITED DISCLOSURE OF DIGITAL ASSETS OR THE COURT DIRECTS OTHERWISE, A CUSTODIAN SHALL DISCLOSE TO THE PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED USER 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.

3. A CERTIFIED COPY OF THE LETTERS TESTAMENTARY, A SMALL-ESTATE AFFIDAVIT OR A COURT ORDER.

4. IF REQUESTED BY THE CUSTODIAN ANY OF THE FOLLOWING:

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

(b) EVIDENCE LINKING THE ACCOUNT TO THE USER.

(c) AN AFFIDAVIT STATING THAT DISCLOSURE OF THE USER'S DIGITAL ASSETS IS REASONABLY NECESSARY FOR ADMINISTRATION OF THE ESTATE.

(d) A FINDING BY THE COURT OF EITHER OF THE FOLLOWING:

(i) THE USER HAD A SPECIFIC ACCOUNT WITH THE CUSTODIAN, IDENTIFIABLE BY THE INFORMATION SPECIFIED IN SUBDIVISION (a) OF THIS PARAGRAPH.

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

14-13109. Disclosure of content of electronic communications of principal

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, A CUSTODIAN SHALL 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.

3. A CERTIFICATION BY THE AGENT, UNDER PENALTY OF PERJURY, THAT THE POWER OF ATTORNEY IS IN EFFECT.

4. IF REQUESTED BY THE CUSTODIAN ANY OF THE FOLLOWING:

(a) A NUMBER, USERNAME, ADDRESS OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE PRINCIPAL'S ACCOUNT.

(b) EVIDENCE LINKING THE ACCOUNT TO THE PRINCIPAL.

14-13110. Disclosure of other digital assets of principal

UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE PRINCIPAL OR PROVIDED BY A POWER OF ATTORNEY, A CUSTODIAN SHALL DISCLOSE TO AN AGENT WITH 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.

3. A CERTIFICATION BY THE AGENT, UNDER PENALTY OF PERJURY, THAT THE POWER OF ATTORNEY IS IN EFFECT.

4. IF REQUESTED BY THE CUSTODIAN ANY OF THE FOLLOWING:

(a) A NUMBER, USERNAME, ADDRESS OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE PRINCIPAL'S ACCOUNT.

(b) EVIDENCE LINKING THE ACCOUNT TO THE PRINCIPAL.

14-13111. Disclosure of digital assets held in trust when trustee is original user

UNLESS OTHERWISE ORDERED BY THE COURT OR PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE TO A TRUSTEE THAT 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.

14-13112. Disclosure of contents of electronic communications held in trust when trustee is not original user

UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE USER OR PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE TO A TRUSTEE THAT IS NOT AN ORIGINAL USER OF AN ACCOUNT THE CONTENT OF AN ELECTRONIC COMMUNICATION 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 OR A CERTIFICATION OF THE TRUST UNDER SECTION 14-11013 THAT INCLUDES CONSENT TO DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS TO THE TRUSTEE.

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.

4. IF REQUESTED BY THE CUSTODIAN ANY OF THE FOLLOWING:

(a) A NUMBER, USERNAME, ADDRESS OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE TRUST'S ACCOUNT.

(b) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

14-13113. Disclosure of other digital assets held in trust when trustee is not original user

UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE USER OR PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE TO A TRUSTEE THAT 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 OR A CERTIFICATION OF THE TRUST UNDER SECTION 14-11013.

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.

4. IF REQUESTED BY THE CUSTODIAN ANY OF THE FOLLOWING:

(a) A NUMBER, USERNAME, ADDRESS OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE TRUST'S ACCOUNT.

(b) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

14-13114. Disclosure of digital assets to conservator of protected person

A. AFTER AN OPPORTUNITY FOR A HEARING UNDER CHAPTER 5, ARTICLE 4 OF THIS TITLE, THE COURT MAY GRANT A CONSERVATOR ACCESS TO THE DIGITAL ASSETS OF A PROTECTED PERSON.

B. UNLESS OTHERWISE ORDERED BY THE COURT OR DIRECTED BY THE USER, A CUSTODIAN SHALL 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 ALL OF THE FOLLOWING:

1. A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM.

2. A CERTIFIED COPY OF THE COURT ORDER THAT GIVES THE CONSERVATOR AUTHORITY OVER THE DIGITAL ASSETS OF THE PROTECTED PERSON.

3. IF REQUESTED BY THE CUSTODIAN ANY OF THE FOLLOWING:

(a) A NUMBER, USERNAME, ADDRESS OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE ACCOUNT OF THE PROTECTED PERSON.

(b) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

C. A CONSERVATOR WITH GENERAL AUTHORITY TO MANAGE THE ASSETS OF A PROTECTED PERSON MAY 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 REQUEST MADE UNDER THIS SUBSECTION MUST BE ACCOMPANIED BY A CERTIFIED COPY OF THE COURT ORDER GIVING THE CONSERVATOR AUTHORITY OVER THE PROTECTED PERSON'S PROPERTY.

14-13115. Fiduciary duty and authority

A. THE LEGAL DUTIES IMPOSED ON A FIDUCIARY CHARGED WITH MANAGING TANGIBLE PROPERTY APPLY TO THE MANAGEMENT OF DIGITAL ASSETS, INCLUDING ALL OF THE FOLLOWING, IF APPLICABLE:

1. THE DUTY OF CARE.

2. THE DUTY OF LOYALTY.

3. THE DUTY OF CONFIDENTIALITY.

B. A FIDUCIARY'S OR DESIGNATED RECIPIENT'S AUTHORITY WITH RESPECT TO A DIGITAL ASSET OF A USER:

1. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14-13104, IS SUBJECT TO THE APPLICABLE TERMS OF SERVICE.

2. IS SUBJECT TO OTHER APPLICABLE LAW, INCLUDING COPYRIGHT LAW.

3. IN THE CASE OF A FIDUCIARY, IS LIMITED BY THE SCOPE OF THE FIDUCIARY'S DUTIES.

4. MAY NOT BE USED TO IMPERSONATE THE USER.

C. A FIDUCIARY WITH AUTHORITY OVER THE PROPERTY OF A DECEDENT, PROTECTED PERSON, PRINCIPAL OR SETTLOR HAS THE RIGHT TO ACCESS ANY DIGITAL ASSET IN WHICH THE DECEDENT, PROTECTED PERSON, PRINCIPAL OR SETTLOR HAD A RIGHT OR INTEREST AND THAT IS NOT HELD BY A CUSTODIAN OR SUBJECT TO A TERMS-OF-SERVICE AGREEMENT.

D. 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 SECTION 13-2316.

E. A FIDUCIARY WITH AUTHORITY OVER THE TANGIBLE, PERSONAL PROPERTY OF A DECEDENT, PROTECTED PERSON, PRINCIPAL OR SETTLOR:

1. HAS THE RIGHT TO ACCESS THE PROPERTY AND ANY DIGITAL ASSET STORED IN IT.

2. IS AN AUTHORIZED USER FOR THE PURPOSE OF COMPUTER-FRAUD AND UNAUTHORIZED-COMPUTER-ACCESS LAWS, INCLUDING SECTION 13-2316.

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

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

1. IF THE USER IS DECEASED, A CERTIFIED COPY OF THE DEATH CERTIFICATE OF THE USER.

2. A CERTIFIED COPY OF THE LETTERS TESTAMENTARY OF THE REPRESENTATIVE, SMALL-ESTATE AFFIDAVIT, COURT ORDER, POWER OF ATTORNEY OR TRUST GIVING THE FIDUCIARY AUTHORITY OVER THE ACCOUNT.

3. IF REQUESTED BY THE CUSTODIAN ANY OF THE FOLLOWING:

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

(b) EVIDENCE LINKING THE ACCOUNT TO THE USER.

(c) A FINDING BY THE COURT THAT THE USER HAD A SPECIFIC ACCOUNT WITH THE CUSTODIAN, IDENTIFIABLE BY THE INFORMATION SPECIFIED IN SUBDIVISION (a) OF THIS PARAGRAPH.

14-13116. Custodian compliance and immunity

A. NOT LATER THAN SIXTY DAYS AFTER RECEIPT OF THE INFORMATION REQUIRED UNDER SECTION 14-13107, 14-13108, 14-13109, 14-13110, 14-13111, 14-13112, 14-13113, 14-13114 OR 14-13115, A CUSTODIAN SHALL COMPLY WITH A REQUEST UNDER THIS CHAPTER FROM A FIDUCIARY OR DESIGNATED RECIPIENT TO DISCLOSE DIGITAL ASSETS OR TERMINATE AN ACCOUNT. IF THE CUSTODIAN FAILS TO COMPLY, THE FIDUCIARY OR DESIGNATED RECIPIENT MAY APPLY TO THE COURT FOR AN ORDER DIRECTING COMPLIANCE.

B. AN ORDER UNDER SUBSECTION A OF THIS SECTION DIRECTING COMPLIANCE MUST CONTAIN A FINDING THAT COMPLIANCE IS NOT IN VIOLATION OF 18 UNITED STATES CODE SECTION 2702.

C. A CUSTODIAN MAY NOTIFY THE USER THAT A REQUEST FOR DISCLOSURE OR TO TERMINATE AN ACCOUNT WAS MADE UNDER THIS CHAPTER.

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

E. THIS CHAPTER DOES NOT LIMIT A CUSTODIAN'S ABILITY TO OBTAIN OR REQUIRE A FIDUCIARY OR DESIGNATED RECIPIENT REQUESTING DISCLOSURE OR TERMINATION UNDER THIS CHAPTER TO OBTAIN A COURT ORDER THAT DOES ANY 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.

3. CONTAINS A FINDING REQUIRED BY LAW OTHER THAN THIS CHAPTER.

F. A CUSTODIAN AND ITS OFFICERS, EMPLOYEES AND AGENTS ARE IMMUNE FROM LIABILITY FOR AN ACT OR OMISSION DONE IN GOOD FAITH IN COMPLIANCE WITH THIS CHAPTER.

14-13117. Uniformity of application and construction

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

14-13118. Relation to electronic signatures in global and national commerce act

THIS CHAPTER MODIFIES, LIMITS AND SUPERSEDES THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 UNITED STATES CODE SECTIONS 7001 THROUGH 7031, BUT DOES NOT MODIFY, LIMIT OR SUPERSEDE 15 UNITED STATES CODE SECTION 7001(c) OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN 15 UNITED STATES CODE SECTION 7003(b).

APPROVED BY THE GOVERNOR MAY 11, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 11, 2016.

Passed the House March 1, 2016

by the following vote: 55 Ayes,

4 Nays, 1 Not Voting

Speaker of the House

☐ Pro Tempore

Chief Clerk of the House

Passed the Senate April 5, 2016

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2467

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 6, 2016,

by the following vote: 50 Ayes,

6 Nays, 4 Not Voting

Speaker of the House

Jim Drake
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

7 day of May, 2016,

at 1:18 o'clock A. M.

Valerie Hanna
Secretary to the Governor

Approved this 11th day of

May, 2016,

at 9:01 o'clock A M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 12 day of May, 2016,

at 3:11 o'clock P M.

Michele Reagan
Secretary of State

H.B. 2467