

1 attorney, whether denominated an agent, an attorney-
2 in-fact, or otherwise; and

3 (2) Includes an original agent, a co-agent, and a
4 successor agent.

5 "Carry" means to engage in the transmission of electronic
6 communications.

7 "Catalogue of electronic communications" means information
8 that identifies each person with which an account holder has had
9 an electronic communication, the time and date of the
10 communication, and the electronic address of the person.

11 "Content of an electronic communication" means information
12 not readily accessible to the public concerning the substance or
13 meaning of an electronic communication.

14 "Court" means a circuit court of this State.

15 "Custodian" means a person who carries, maintains,
16 processes, receives, or stores a digital asset of an account
17 holder.

18 "Digital asset":

19 (1) Means an electronic record; and



1 (2) Does not include an underlying asset or liability to
2 which an electronic record refers, unless the asset or
3 liability is itself an electronic record.

4 "Electronic" means having electrical, digital, magnetic,
5 wireless, optical, electromagnetic, or similar capabilities.

6 "Electronic communication":

7 (1) Means a digital asset stored by an electronic
8 communication service or carried or maintained by a
9 remote computing service; and

10 (2) Includes the catalogue of electronic communications
11 and the content of an electronic communication.

12 "Electronic communication service" means a custodian who
13 provides to the public the ability to send or receive an
14 electronic communication.

15 "Fiduciary" means a person who is an original, additional,
16 or successor personal representative, guardian, agent, or
17 trustee.

18 "Guardian":

19 (1) Means a person who has been appointed by the court as
20 guardian of the property of a minor or incapacitated
21 individual; and



1 (2) Includes a person who has been appointed by the court
2 as an emergency temporary guardian of the property.

3 "Information" means data, text, images, videos, sounds,
4 codes, computer programs, software, databases, or the like.

5 "Person" means an individual, estate, trust, business or
6 nonprofit entity, public corporation, government or governmental
7 subdivision, agency, or instrumentality, or other legal entity.

8 "Personal representative" means the fiduciary appointed by
9 the court to administer the estate of a deceased individual
10 pursuant to letters of administration or an order appointing a
11 curator or administrator ad litem for the estate.

12 "Power of attorney" means a record that grants an agent
13 authority to act in the place of a principal.

14 "Principal" means an individual who grants authority to an
15 agent in a power of attorney.

16 "Record" means information that is inscribed on a tangible
17 medium or that is stored in an electronic or other medium and is
18 retrievable in perceivable form.

19 "Remote computing service" means a custodian who provides
20 to the public computer processing services or the storage of



1 digital assets by means of an electronic communications system,
2 as defined in title 18 United States Code section 2510(14).

3 "Terms of service agreement" means an agreement that
4 controls the relationship between an account holder and a
5 custodian.

6 "Trustee" means a fiduciary who holds legal title to a
7 digital asset pursuant to an agreement, declaration, or trust
8 instrument that creates a beneficial interest in the settlor or
9 others.

10 "Ward" means an individual for whom a guardian has been
11 appointed.

12 "Will":

13 (1) Means an instrument admitted to probate, including a
14 codicil, executed by an individual in the manner
15 prescribed by the uniform probate code, that disposes
16 of the individual's property upon or after the
17 individual's death; and

18 (2) Includes an instrument that merely appoints a personal
19 representative or revokes or revises another will.

20 § -2 Authority of personal representative over digital
21 assets of a decedent. Subject to section -6(b) and unless



1 otherwise provided by the court or the will of a decedent, a
2 personal representative shall have the right to access:

3 (1) The content of an electronic communication sent or
4 received by the decedent if the electronic
5 communication service or remote computing service is
6 authorized to disclose the content under title 18
7 United States Code section 2702(b);

8 (2) The catalogue of electronic communications sent or
9 received by the decedent; and

10 (3) Any other digital asset in which the decedent had a
11 right or interest at the time of the decedent's death.

12 **§ -3 Authority of guardian over digital assets of a**
13 **ward.** The court, after an opportunity for hearing, may grant a
14 guardian the right to access:

15 (1) The content of an electronic communication sent or
16 received by the ward if the electronic communication
17 service or remote computing service is authorized to
18 disclose the content under title 18 United States Code
19 section 2702(b);

20 (2) The catalogue of electronic communications sent or
21 received by the ward; and



1 (3) Any other digital asset in which the ward has a right
2 or interest.

3 § -4 Control by agent of digital assets. (a) To the
4 extent a power of attorney expressly grants authority to an
5 agent over the content of an electronic communication of the
6 principal, the agent shall have the right to access the content
7 of an electronic communication sent or received by the principal
8 if the electronic communication service or remote computing
9 service is authorized to disclose the content under title 18
10 United States Code section 2702(b).

11 (b) Except as provided in subsection (a) and unless
12 otherwise provided by a power of attorney or a court order, an
13 agent shall have the right to access:

14 (1) The catalogue of electronic communications sent or
15 received by the principal; and

16 (2) Any other digital asset in which the principal has a
17 right or interest.

18 § -5 Control by trustee of digital assets. Subject to
19 section -6(b) and unless otherwise provided by the court or
20 the terms of a trust, a trustee or a successor of a trustee who
21 is:



1 (1) An original account holder shall have the right to
2 access each digital asset held in trust, including the
3 catalogue of electronic communications sent or
4 received and the content of an electronic
5 communication; or

6 (2) Not an original account holder shall have the right to
7 access the following digital assets held in trust:

8 (A) The catalogue of electronic communications sent
9 or received by the account holder;

10 (B) The content of an electronic communication sent
11 or received by the account holder if the
12 electronic communication service or remote
13 computing service is authorized to disclose the
14 content under title 18 United States Code section
15 2702(b); and

16 (C) Any other digital asset in which the account
17 holder or any successor account holder has a
18 right or interest.

19 § -6 **Fiduciary access and authority.** (a) A fiduciary
20 who is an account holder or has the right under this chapter to
21 access a digital asset of an account holder:



1 (1) May take any action concerning the digital asset to
2 the extent of the account holder's authority and the
3 fiduciary's powers under the laws of this State,
4 subject to the terms-of-service agreement and
5 copyright or other applicable law;

6 (2) Shall be deemed to have the lawful consent of the
7 account holder for the custodian to divulge the
8 content of an electronic communication to the
9 fiduciary under applicable electronic privacy laws;
10 and

11 (3) Shall be an authorized user under applicable computer
12 fraud and unauthorized access laws.

13 (b) If a provision in a terms-of-service agreement limits
14 a fiduciary's access to a digital asset of the account holder,
15 the provision shall be void as against the strong public policy
16 of this State unless the account holder agreed to the provision
17 after July 1, 2019, by an affirmative act separate from the
18 account holder's assent to other provisions of the terms-of-
19 service agreement.

20 (c) A choice of law provision in a terms of service
21 agreement shall be unenforceable against a fiduciary acting



1 under this chapter to the extent the provision designates a law
2 that enforces a limitation upon a fiduciary's access to a
3 digital asset that is void under subsection (b).

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

9 (e) As to tangible personal property capable of receiving,
10 storing, processing, or sending a digital asset, a fiduciary
11 with authority over the property of a decedent, ward, principal,
12 or settlor shall have the right to access the property and any
13 digital asset stored in it and shall be an authorized user for
14 purposes of any applicable computer fraud and unauthorized
15 access laws, including the laws of this State.

16 § -7 Compliance. (a) If a fiduciary who has a right
17 under this chapter to access a digital asset of an account
18 holder complies with subsection (b), the custodian shall comply
19 with the fiduciary's request for a record for:

- 20 (1) Access to the digital asset;
21 (2) Control of the digital asset; and



- 1 (3) A copy of the digital asset to the extent authorized
2 by copyright law.
- 3 (b) If a request under subsection (a) is made by:
- 4 (1) A personal representative who has the right of access
5 under section -2, the request shall be accompanied
6 by a certified copy of the letters of administration
7 of the personal representative, an order authorizing a
8 curator or administrator ad litem, or other court
9 order;
- 10 (2) A guardian who has the right of access under
11 section -3, the request shall be accompanied by a
12 certified copy of letters of plenary guardianship of
13 the property or a court order that gives the guardian
14 authority over the digital asset;
- 15 (3) An agent who has the right of access under
16 section -4, the request shall be accompanied by an
17 original or a copy of the power of attorney that
18 authorizes the agent to exercise authority over the
19 digital asset and a certification of the agent, under
20 penalty of perjury, that the power of attorney is in
21 effect;



1 (4) A trustee who has the right of access under
2 section -5, the request shall be accompanied by a
3 certified copy of the trust instrument that authorizes
4 the trustee to exercise authority over the digital
5 asset; or

6 (5) A person who is entitled to receive and collect
7 specified digital assets, the request shall be
8 accompanied by a certified copy of a court order
9 issued pursuant to chapter 560.

10 (c) A custodian shall comply with a request made under
11 subsection (a) not later than sixty days after receipt. If the
12 custodian fails to comply, the fiduciary may apply to the court
13 for an order directing compliance.

14 (d) A custodian who receives a certification of trust may
15 require the trustee to provide copies of excerpts from the
16 original trust instrument and later amendments that designate
17 the trustee and confer upon the trustee the power to act in the
18 pending transaction.

19 (e) A custodian who acts in reliance on a certification of
20 trust without knowledge that the representations contained in it
21 are incorrect shall not be liable to any person for so acting



1 and may assume without inquiry the existence of facts stated in
2 the certification.

3 (f) A custodian who enters into a transaction in good
4 faith and in reliance on a certification of trust may enforce
5 the transaction against the trust property as if the
6 representations contained in the certification were correct.

7 (g) A custodian who demands the trust instrument in
8 addition to a certification of trust or excerpts under
9 subsection (d) shall be liable for damages if the court
10 determines that the custodian did not act in good faith in
11 demanding the trust instrument.

12 (h) This section shall not limit the right of a person to
13 obtain a copy of a trust instrument in a judicial proceeding
14 concerning the trust.

15 § -8 Immunity. A custodian and its officers, employees,
16 and agents shall be immune from liability for any action done in
17 good faith in compliance with this chapter.

18 § -9 Relation to federal Electronic Signatures in Global
19 and National Commerce Act. This chapter shall modify, limit, or
20 supersede the Electronic Signatures in Global and National
21 Commerce Act, as codified in title 15 United States Code



1 sections 7001 et seq., but shall not modify, limit, or supersede
2 section 101(c) of that Act, as codified in title 15 United
3 States Code section 7001(c), or authorize electronic delivery of
4 the notices described in section 103(b) of that Act, as codified
5 in title 15 United States Code section 7003(b).

6 § -10 **Applicability.** (a) Subject to subsection (b),
7 this chapter shall apply to:

8 (1) An agent acting under a power of attorney executed
9 before, on, or after July 1, 2019;

10 (2) A personal representative acting for a decedent who
11 died before, on, or after July 1, 2019;

12 (3) A guardian appointed through a guardianship
13 proceeding, whether pending in a court or commenced
14 before, on, or after July 1, 2019; and

15 (4) A trustee acting under a trust created before, on, or
16 after July 1, 2019.

17 (b) This chapter shall not apply to a digital asset of an
18 employer used by an employee in the ordinary course of the
19 employer's business."
20



S.B. NO. 847

1 SECTION 2. This Act shall take effect on July 1, 2019.

2

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S.B. NO. 847

Report Title:

Fiduciary; Digital Assets

Description:

Gives various types of fiduciaries access to the digital assets of the principal.

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