

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 102**

SENATOR TRUMP, *original sponsor*

[Passed March 7, 2018; in effect 90 days from passage]



1 AN ACT to amend and reenact §39B-2-101 of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §39B-3-101 of said code; and to amend said code by adding thereto  
3 a new article, designated §44-5B-1, §44-5B-2, §44-5B-3, §44-5B-4, §44-5B-5, §44-5B-6,  
4 §44-5B-7, §44-5B-8, §44-5B-9, §44-5B-10, §44-5B-11, §44-5B-12, §44-5B-13, §44-5B-  
5 14, §44-5B-15, §44-5B-16, §44-5B-17, §44-5B-18, and §44-5B-19, all relating to the  
6 Uniform Power of Attorney Act and the West Virginia Uniform Fiduciary Access to Digital  
7 Assets Act; providing that an agent under power of attorney may exercise authority over  
8 the content of electronic communications sent or received by the principal; clarifying the  
9 ability of an agent under a power of attorney to take self-benefitting actions; providing code  
10 references and additional language to the statutory form for power of attorney; creating  
11 the West Virginia Uniform Fiduciary Access to Digital Assets Act; providing a short title;  
12 defining certain terms; setting forth to whom the article applies; providing for user direction  
13 for disclosure of assets with or without an online tool; addressing terms of service  
14 agreements; setting forth procedure for disclosing digital assets by custodian; allowing  
15 custodian to assess reasonable administrative charges; allowing custodian or fiduciary to  
16 seek court order when request imposes an undue burden; providing for disclosure of  
17 content of electronic communications and other digital assets of deceased users and  
18 setting forth required documentation; providing for disclosure of content of electronic  
19 communications and digital assets of a principal by custodian and setting forth required  
20 documentation; addressing disclosure of digital assets held in trust when the trustee is an  
21 original owner or user; addressing disclosure of contents of electronic communications  
22 held in trust and other digital assets when trustee is not an original owner or user and  
23 setting forth required documentation; addressing disclosure of digital assets to  
24 conservator of a protected person and setting forth required documentation; setting forth  
25 fiduciary's duties and authority; providing for custodian's compliance and immunity; setting  
26 time frame for compliance by custodian; authorizing application for court order for

27 noncompliance; allowing custodian to notify user, deny a request, or receive a court order;  
28 providing for uniformity of application and construction of article; addressing relation of  
29 article to Electronic Signatures in Global and National Commerce Act; and providing for  
30 severability of article.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 39B. UNIFORM POWER OF ATTORNEY ACT.**

### **ARTICLE 2. AUTHORITY.**

#### **§39B-2-101. Authority that requires specific grant; grant of general authority.**

1 (a) An agent under a power of attorney may do the following on behalf of the principal or  
2 with the principal's property only if the power of attorney expressly grants the agent the authority  
3 and exercise of the authority is not otherwise prohibited by another agreement or instrument to  
4 which the authority or property is subject to:

5 (1) Create, amend, revoke, or terminate an inter vivos trust;

6 (2) Make a gift;

7 (3) Create or change rights of survivorship;

8 (4) Create or change a beneficiary designation;

9 (5) Delegate authority granted under the power of attorney;

10 (6) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including  
11 a survivor benefit under a retirement plan;

12 (7) Exercise fiduciary powers that the principal has authority to delegate;

13 (8) Disclaim property, including a power of appointment; or

14 (9) Exercise authority over the content of electronic communications, as defined in 18  
15 U.S.C. Section 2510(12) sent or received by the principal.

16 (b) Notwithstanding a grant of authority to do an act described in this section, unless the  
17 power of attorney otherwise provides, an agent may not exercise authority under a power of

18 attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of  
19 support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary  
20 designation, disclaimer, or otherwise.

21 (c) Subject to §39B-2-101(a), §39B-2-101(b), §39B-2-101(d), and §39B-2-101(e) of this  
22 code, if a power of attorney grants to an agent authority to do all acts that a principal could do,  
23 the agent has the general authority described in §39B-2-104 through §39B-2-116 of this code.

24 (d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is  
25 subject to the provisions of §39B-2-117 of this code.

26 (e) Subject to §39B-2-101(a), §39B-2-101(b), §39B-2-101(d), and §39B-2-101(e) of this  
27 code, if the subjects over which authority is granted in a power of attorney are similar or overlap,  
28 the broadest authority controls.

29 (f) Authority granted in a power of attorney is exercisable with respect to property that the  
30 principal has when the power of attorney is executed or acquires later, whether or not the property  
31 is located in this state and whether or not the authority is exercised or the power of attorney is  
32 executed in this state.

33 (g) An act performed by an agent pursuant to a power of attorney has the same effect and  
34 inures to the benefit of and binds the principal and the principal's successors in interest as if the  
35 principal had performed the act.

### **ARTICLE 3. STATUTORY FORMS.**

#### **§39B-3-101. Statutory form power of attorney.**

1 A document substantially in the following form may be used to create a statutory form  
2 power of attorney that has the meaning and effect prescribed by this act.

STATE OF WEST VIRGINIA

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

3 This power of attorney authorizes another person (your agent) to make decisions  
4 concerning your property for you (the principal). Your agent will be able to make decisions and  
5 act with respect to your property (including your money) whether or not you are able to act for  
6 yourself. The meaning of authority over subjects listed on this form is explained in the Uniform  
7 Power of Attorney Act, §39B-1-101 *et seq.* of this code.

8 This power of attorney does not authorize the agent to make health care decisions for you.

9 You should select someone you trust to serve as your agent. Unless you specify  
10 otherwise, generally the agent's authority will continue until you die or revoke the power of  
11 attorney or the agent resigns or is unable to act for you.

12 Your agent is entitled to reasonable compensation unless you state otherwise in the  
13 special instructions. This form provides for designation of one agent. If you wish to name more  
14 than one agent you may name a coagent in the Special Instructions. Coagents are not required  
15 to act together unless you include that requirement in the Special Instructions. If your agent is  
16 unable or unwilling to act for you, your power of attorney will end unless you have named a  
17 successor agent. You may also name a second successor agent.

18 This power of attorney becomes effective immediately unless you state otherwise in the  
19 Special Instructions.

20 If you have questions about the power of attorney or the authority you are granting to your  
21 agent, you should seek legal advice before signing this form.

#### DESIGNATION OF AGENT

22 I \_\_\_\_\_ name the following person as my agent:

23 (Name of Principal)

24 Name of Agent: \_\_\_\_\_

25 Agent's Address: \_\_\_\_\_

26 Agent's Telephone Number: \_\_\_\_\_

27 If my agent is unable or unwilling to act for me, I name as my successor agent:

28 Name of Successor Agent:\_\_\_\_\_

29 Successor Agent's Address:\_\_\_\_\_

30 Successor Agent's Telephone Number:\_\_\_\_\_

31 If my successor agent is unable or unwilling to act for me, I name as my second successor  
32 agent:

33 Name of Second Successor Agent:\_\_\_\_\_

34 Second Successor Agent's Address:\_\_\_\_\_

35 Second Successor Agent's Telephone Number:\_\_\_\_\_

### GRANT OF GENERAL AUTHORITY

36 I grant my agent and any successor agent general authority to act for me with respect to  
37 the following subjects as defined in the Uniform Power of Attorney Act, §39B-1-101 *et seq.* of this  
38 code:

39 (INITIAL each subject you want to include in the agent's general authority. If you wish to  
40 grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of  
41 initialing each subject.)

42  Real Property

43  Tangible Personal Property

44  Stocks and Bonds

45  Commodities and Options

46  Banks and Other Financial Institutions

47  Operation of Entity or Business

48  Insurance and Annuities

49  Estates, Trusts, and Other Beneficial Interests

50  Claims and Litigation

51  Personal and Family Maintenance

52  Benefits from Governmental Programs or Civil or Military Service

- 53             Retirement Plans
- 54             Taxes
- 55             All Preceding Subjects

**GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

56            My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED  
57 the specific authority listed below:

58            (CAUTION: Granting any of the following will give your agent the authority to take actions  
59 that could significantly reduce your property or change how your property is distributed at your  
60 death. INITIAL ONLY the specific authority you WANT to give your agent.)

- 61             Create, amend, revoke, or terminate an inter vivos trust
- 62             Make a gift, subject to the limitations of the West Virginia Uniform Power of Attorney  
63 Act and any special instructions in this power of attorney
- 64             Create or change rights of survivorship
- 65             Create or change a beneficiary designation
- 66             Authorize another person to exercise the authority granted under this power of  
67 attorney
- 68             Waive the principal's right to be a beneficiary of a joint and survivor annuity, including  
69 a survivor benefit under a retirement plan
- 70             Exercise fiduciary powers that the principal has authority to delegate
- 71             Disclaim or refuse an interest in property, including a power of appointment
- 72             Access the content of electronic communications

**LIMITATION ON AGENT'S AUTHORITY**

73            An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to  
74 benefit the agent or a person to whom the agent owes an obligation of support unless I have  
75 included that authority in the Special Instructions.

**SPECIAL INSTRUCTIONS (OPTIONAL)**



76 You may give special instructions on the following lines:

77 \_\_\_\_\_

78 \_\_\_\_\_

79 \_\_\_\_\_

80 \_\_\_\_\_

81 \_\_\_\_\_

82 \_\_\_\_\_

EFFECTIVE DATE

83 This power of attorney is effective immediately unless I have stated otherwise in the  
84 special instructions.

NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)

85 If it becomes necessary for a court to appoint a [conservator or guardian] of my estate or  
86 [guardian] of my person, I nominate the following person(s) for appointment:

87 Name of Nominee for [conservator or guardian] of my estate:

88 \_\_\_\_\_

89 Nominee's Address: \_\_\_\_\_

90 Nominee's Telephone Number: \_\_\_\_\_

91 Name of Nominee for [guardian] of my person: \_\_\_\_\_

92 Nominee's Address: \_\_\_\_\_

93 Nominee's Telephone Number: \_\_\_\_\_

94 RELIANCE ON THIS POWER OF ATTORNEY

95 Any person, including my agent, may rely upon the validity of this power of attorney or a  
96 copy of it unless that person knows it has terminated or is invalid. Unless expressly stated  
97 otherwise, this power of attorney is durable and shall remain valid if I become incapacitated.

98 SIGNATURE AND ACKNOWLEDGMENT

99 \_\_\_\_\_

100 Your Signature \_\_\_\_\_ Date \_\_\_\_\_

101 Your Name Printed \_\_\_\_\_

102 Your Address \_\_\_\_\_

103 Your Telephone Number \_\_\_\_\_

104 State of \_\_\_\_\_

105 [County] of \_\_\_\_\_

106 This document was acknowledged before me on \_\_\_\_\_,

107 (Date)

108 by \_\_\_\_\_.

109 (Name of Principal)

110 \_\_\_\_\_ (Seal, if any)

111 Signature of Notary

112 My commission expires: \_\_\_\_\_

113 [This document prepared by: \_\_\_\_\_]

### IMPORTANT INFORMATION FOR AGENT

#### 114 **Agent's Duties**

115 When you accept the authority granted under this power of attorney, a special legal  
116 relationship is created between you and the principal. This relationship imposes upon you legal  
117 duties that continue until you resign or the power of attorney is terminated or revoked. You must:

118 (1) Do what you know the principal reasonably expects you to do with the principal's  
119 property or, if you do not know the principal's expectations, act in the principal's best interest; act  
120 in good faith;

121 (2) Do nothing beyond the authority granted in this power of attorney; and

122 (3) Disclose your identity as an agent whenever you act for the principal by writing or  
123 printing the name of the principal and signing your own name as "agent" in the following manner:

124 \_\_\_\_\_ by \_\_\_\_\_

125 (Principal's Name) (Your Signature) as Agent

126 Unless the special instructions in this power of attorney state otherwise, you must also:

127 (1) Act loyally for the principal's benefit;

128 (2) Avoid conflicts that would impair your ability to act in the principal's best interest;

129 (3) Act with care, competence, and diligence;

130 (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the  
131 principal;

132 (5) Cooperate with any person that has authority to make health care decisions for the  
133 principal to do what you know the principal reasonably expects or, if you do not know the  
134 principal's expectations, to act in the principal's best interest; and attempt to preserve the  
135 principal's estate plan if you know the plan and preserving the plan is consistent with the  
136 principal's best interest.

#### TERMINATION OF AGENT'S AUTHORITY

137 You must stop acting on behalf of the principal if you learn of any event that terminates  
138 this power of attorney or your authority under this power of attorney. Events that terminate a power  
139 of attorney or your authority to act under a power of attorney include:

140 (1) Death of the principal;

141 (2) The principal's revocation of the power of attorney or your authority;

142 (3) The occurrence of a termination event stated in the power of attorney;

143 (4) The purpose of the power of attorney is fully accomplished; or

144 (5) If you are married to the principal, a legal action is filed with a court to end your marriage  
145 or for your legal separation, unless the Special Instructions in this power of attorney state that  
146 such an action will not terminate your authority.

#### LIABILITY OF AGENT

147 The meaning of the authority granted to you is defined in the Uniform Power of Attorney  
148 Act, §39B-1-101 *et seq.* of this code. If you violate the Uniform Power of Attorney Act, as set forth

149 in §39B-1-101 *et seq.* of this code, or act outside the authority granted, you may be liable for any  
150 damages caused by your violation.

151 If there is anything about this document or your duties that you do not understand, you  
152 should seek legal advice.

## **CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.**

### **ARTICLE 5B. WEST VIRGINIA UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS**

#### **ACT.**

##### **§44-5B-1. Short title.**

1 This article may be cited as the West Virginia Uniform Fiduciary Access to Digital Assets  
2 Act.

##### **§44-5B-2. Definitions.**

1 In this article:

2 “Account” means an arrangement under a terms-of-service agreement in which a  
3 custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides  
4 goods or services to the user;

5 “Agent” means an attorney-in-fact granted authority under a durable or nondurable power  
6 of attorney;

7 “Carries” means engages in the transmission of an electronic communication;

8 “Catalogue of electronic communications” means information that identifies each person  
9 with whom a user has had an electronic communication, the time and date of the communication,  
10 and the electronic address of the person;

11 “Conservator” means a person appointed by a court to manage the estate and financial  
12 affairs of a protected person. The term includes a limited conservator and temporary conservator;

13 “Content of an electronic communication” means information concerning the substance or  
14 meaning of the communication which:

15 (1) Has been sent or received by a user;

16           (2) Is in electronic storage by a custodian providing an electronic communication service  
17 to the public or is carried or maintained by a custodian providing a remote computing service to  
18 the public; and

19           (3) Is not readily accessible to the public;

20           “Court” means the circuit court of the county having jurisdiction over the fiduciary or  
21 designated recipient;

22           “Custodian” means a person that carries, maintains, processes, receives, or stores a  
23 digital asset of a user;

24           “Designated recipient” means a person chosen by a user using an online tool to administer  
25 digital assets of the user;

26           “Digital asset” means an electronic record in which an individual has a right or interest.  
27 The term does not include an underlying asset or liability, unless the asset or liability is itself an  
28 electronic record;

29           “Electronic” means relating to technology having electrical, digital, magnetic, wireless,  
30 optical, electromagnetic, or similar capabilities;

31           “Electronic communication” has the meaning set forth in 18 U.S.C. § 2510(12);

32           “Electronic communication service” means a custodian that provides to a user the ability  
33 to send or receive an electronic communication;

34           “Fiduciary” means an original, additional or successor personal representative,  
35 conservator, agent, or trustee;

36           “Information” means data, text, images, videos, sounds, codes, computer programs,  
37 software, databases, or the like;

38           “Online tool” means an electronic service provided by a custodian that allows the user, in  
39 an agreement distinct from the terms-of-service agreement between the custodian and user, to  
40 provide directions for disclosure or nondisclosure of digital assets to a third person;

41 “Person” means an individual, estate, business or nonprofit entity, public corporation,  
42 government or governmental subdivision, agency, instrumentality, or other legal entity;

43 “Personal representative” means an executor, administrator, special administrator, or  
44 person that performs substantially the same function under law of this state other than this article;

45 “Power of attorney” means a record that grants an agent authority to act in the place of a  
46 principal;

47 “Principal” means an individual who grants authority to an agent in a power of attorney;

48 “Protected person” means an individual for whom a conservator has been appointed. The  
49 term includes an individual for whom an application for the appointment of a conservator is  
50 pending;

51 “Record” means information that is inscribed on a tangible medium or that is stored in an  
52 electronic or other medium and is retrievable in perceivable form;

53 “Remote computing service” means a custodian that provides to a user computer-  
54 processing services or the storage of digital assets by means of an electronic communications  
55 system, as defined in 18 U.S.C. § 2510(14);

56 “Terms of service agreement” means an agreement that controls the relationship between  
57 a user and a custodian;

58 “Trustee” means a fiduciary with legal title to property under an agreement or declaration  
59 that creates a beneficial interest in another. The term includes a successor trustee;

60 “User” means a person that has an account with a custodian; and

61 “Will” includes a codicil, testamentary instrument that only appoints an executor, and  
62 instrument that revokes or revises a testamentary instrument.

**§44-5B-3. Applicability.**

1 (a) This article applies to:

2 (1) A fiduciary acting under a will or power of attorney executed before, on, or after the  
3 effective date of this article;

4 (2) A personal representative acting for a decedent who died before, on, or after the  
5 effective date of this article;

6 (3) A conservatorship proceeding commenced before, on, or after the effective date of this  
7 article; and

8 (4) A trustee acting under a trust created before, on, or after the effective date of this  
9 article.

10 (b) This article applies to a custodian if the user resides in this state or resided in this state  
11 at the time of the user's death.

12 (c) This article does not apply to a digital asset of an employer used by an employee in  
13 the ordinary course of the employer's business.

**§44-5B-4. User direction for disclosure of digital assets.**

1 (a) A user may use an online tool to direct the custodian to disclose or not to disclose to a  
2 designated recipient some or all of the user's digital assets, including the content of electronic  
3 communications. If the online tool allows the user to modify or delete a direction at all times, a  
4 direction regarding disclosure using an online tool overrides a contrary direction by the user in a  
5 will, trust, power of attorney, or other record.

6 (b) If a user has not used an online tool to give direction under §44B-5B-3(a) of this code  
7 or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust,  
8 power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital  
9 assets, including the content of electronic communications sent or received by the user.

10 (c) A user's direction under §44-5B-4(a) or §44-5B-4(b) of this code overrides a contrary  
11 provision in a terms-of-service agreement that does not require the user to act affirmatively and  
12 distinctly from the user's assent to the terms of service.

**§44-5B-5. Terms of service agreement.**

1 (a) This article does not change or impair a right of a custodian or a user under a terms-  
2 of-service agreement to access and use digital assets of the user.

3 (b) This article does not give a fiduciary or a designated recipient any new or expanded  
4 rights other than those held by the user for whom, or for whose estate, the fiduciary or designated  
5 recipient acts or represents.

6 (c) A fiduciary's or a designated recipient's access to digital assets may be modified or  
7 eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not  
8 provided direction under §44-5B-4 of this code.

**§44-5B-6. Procedure for disclosing digital assets.**

1 (a) When disclosing digital assets of a user under this article, the custodian may at its sole  
2 discretion:

3 (1) Grant a fiduciary or designated recipient full access to the user's account;

4 (2) Grant a fiduciary or designated recipient partial access to the user's account sufficient  
5 to perform the tasks with which the fiduciary or designated recipient is charged; or

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

9 (b) A custodian may assess a reasonable administrative charge for the cost of disclosing  
10 digital assets under this article.

11 (c) A custodian need not disclose under this article a digital asset deleted by a user.

12 (d) If a user directs or a fiduciary requests a custodian to disclose under this article some,  
13 but not all, of the user's digital assets, the custodian need not disclose the assets if segregation  
14 of the assets would impose an undue burden on the custodian. If the custodian believes the  
15 direction or request imposes an undue burden, the custodian or fiduciary may seek an order from  
16 the court to disclose:

17 (1) A subset limited by date of the user's digital assets;

18 (2) All of the user's digital assets to the fiduciary or designated recipient;

19 (3) None of the user's digital assets; or



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

**§44-5B-7. Disclosure of content of electronic communications of deceased user.**

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

5 (a) A written request for disclosure in physical or electronic form;

6 (b) A certified copy of the death certificate of the user;

7 (c) A certified copy of the letter of appointment of the representative;

8 (d) Unless the user provided direction using an online tool, a copy of the user's will, trust,  
9 power of attorney or other record evidencing the user's consent to disclosure of the content of  
10 electronic communications; and

11 (e) If requested by the custodian:

12 (1) A number, username, address, or other unique subscriber or account identifier  
13 assigned by the custodian to identify the user's account;

14 (2) Evidence linking the account to the user; or

15 (3) A finding by the court that:

16 (A) The user had a specific account with the custodian, identifiable by the information  
17 specified in §44-5B-7(e)(1) of this code;

18 (B) Disclosure of the content of electronic communications of the user would not violate  
19 18 U.S.C. § 2701 *et seq.*, 47 U.S.C. § 222, or other applicable law;

20 (C) Unless the user provided direction using an online tool, the user consented to  
21 disclosure of the content of electronic communications; or

22 (D) Disclosure of the content of electronic communications of the user is reasonably  
23 necessary for administration of the estate.

**§44-5B-8. Disclosure of other digital assets of deceased user.**

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

- 6           (a) A written request for disclosure in physical or electronic form;
- 7           (b) A certified copy of the death certificate of the user;
- 8           (c) A certified copy of the letter of appointment of the representative; and
- 9           (d) If requested by the custodian:

10           (1) A number, username, address, or other unique subscriber or account identifier  
11           assigned by the custodian to identify the user's account;

12           (2) Evidence linking the account to the user;

13           (3) An affidavit stating that disclosure of the user's digital assets is reasonably necessary  
14           for administration of the estate; or

15           (4) A finding by the court that:

16           (A) The user had a specific account with the custodian, identifiable by the information  
17           specified in §44-5B-8(d)(1) of this code; or

18           (B) Disclosure of the user's digital assets is reasonably necessary for administration of the  
19           estate.

**§44-5B-9. Disclosure of content of electronic communications of principal.**

1           To the extent a power of attorney expressly grants an agent authority over the content of  
2           electronic communications sent or received by the principal and unless directed otherwise by the  
3           principal or the court, a custodian shall disclose to the agent the content if the agent gives the  
4           custodian:

- 5           (a) A written request for disclosure in physical or electronic form;

6 (b) An original or copy of the power of attorney expressly granting the agent authority over  
7 the content of electronic communications of the principal;

8 (c) A certification by the agent, under penalty of perjury, that the power of attorney is in  
9 effect; and

10 (d) If requested by the custodian:

11 (1) A number, username, address, or other unique subscriber or account identifier  
12 assigned by the custodian to identify the principal's account; or

13 (2) Evidence linking the account to the principal.

**§44-5B-10. Disclosure of other digital assets of principal.**

1 Unless otherwise ordered by the court, directed by the principal, or provided by a power  
2 of attorney, a custodian shall disclose to an agent with specific authority over digital assets or  
3 general authority to act on behalf of a principal a catalogue of electronic communications sent or  
4 received by the principal and digital assets, other than the content of electronic communications,  
5 of the principal if the agent gives the custodian:

6 (a) A written request for disclosure in physical or electronic form;

7 (b) An original or a copy of the power of attorney that gives the agent specific authority  
8 over digital assets or general authority to act on behalf of the principal;

9 (c) A certification by the agent, under penalty of perjury, that the power of attorney is in  
10 effect; and

11 (d) If requested by the custodian:

12 (1) A number, username, address, or other unique subscriber or account identifier  
13 assigned by the custodian to identify the principal's account; or

14 (2) Evidence linking the account to the principal.

**§44-5B-11. Disclosure of digital assets held in trust when trustee is original user.**

1 Unless otherwise ordered by the court or provided in a trust instrument, a custodian shall  
2 disclose to a trustee that is an original user of an account any digital asset of the account held in

3 trust, including a catalogue of electronic communications of the trustee and the content of  
4 electronic communications.

**§44-5B-12. Disclosure of contents of electronic communications held in trust when trustee  
not original user.**

1 Unless otherwise ordered by the court, directed by the user, or provided in a trust  
2 instrument, a custodian shall disclose to a trustee that is not an original user of an account the  
3 content of an electronic communication sent or received by an original or successor user and  
4 carried, maintained, processed, received, or stored by the custodian in the account of the trust if  
5 the trustee gives the custodian:

6 (a) A written request for disclosure in physical or electronic form;

7 (b) A certified copy of the trust instrument or a certification of the trust under §44D-10-1013  
8 of this code that includes consent to disclose the content of electronic communications to the  
9 trustee;

10 (c) A certification by the trustee, under penalty of perjury, that the trust exists and the  
11 trustee is a currently acting trustee of the trust; and

12 (d) If requested by the custodian:

13 (1) A number, username, address, or other unique subscriber or account identifier  
14 assigned by the custodian to identify the trust's account; or

15 (2) Evidence linking the account to the trust.

**§44-5B-13. Disclosure of other digital assets held in trust when trustee not original user.**

1 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a  
2 custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of  
3 electronic communications sent or received by an original or successor user and stored, carried,  
4 or maintained by the custodian in an account of the trust and any digital assets, other than the  
5 content of electronic communications, in which the trust has a right or interest if the trustee gives  
6 the custodian:

- 7 (1) A written request for disclosure in physical or electronic form;
- 8 (2) A certified copy of the trust instrument or a certification of the trust under §44D-10-  
9 1013 of this code;
- 10 (3) A certification by the trustee, under penalty of perjury, that the trust exists and the  
11 trustee is a currently acting trustee of the trust; and
- 12 (4) If requested by the custodian:
  - 13 (A) A number, username, address, or other unique subscriber or account identifier  
14 assigned by the custodian to identify the trust's account; or
  - 15 (B) Evidence linking the account to the trust.

**§44-5B-14. Disclosure of digital assets to conservator of protected person.**

- 1 (a) After an opportunity for a hearing under §44A-1-1 *et seq.* of this code, the court may  
2 grant a conservator access to the digital assets of a protected person.
- 3 (b) Unless otherwise ordered by the court or directed by the user, a custodian shall  
4 disclose to a conservator the catalogue of electronic communications sent or received by a  
5 protected person and any digital assets, other than the content of electronic communications, in  
6 which the protected person has a right or interest if the conservator gives the custodian:
  - 7 (1) A written request for disclosure in physical or electronic form;
  - 8 (2) A certified copy of the court order that gives the conservator authority over the digital  
9 assets of the protected person; and
  - 10 (3) If requested by the custodian:
    - 11 (A) A number, username, address, or other unique subscriber or account identifier  
12 assigned by the custodian to identify the account of the protected person; or
    - 13 (B) Evidence linking the account to the protected person.
  - 14 (c) A conservator with general authority to manage the assets of a protected person may  
15 request a custodian of the digital assets of the protected person to suspend or terminate an  
16 account of the protected person for good cause. A request made under this section must be

17 accompanied by a certified copy of the court order giving the conservator authority over the  
18 protected person's property.

**§44-5B-15. Fiduciary duty and authority.**

1 (a) The legal duties imposed on a fiduciary charged with managing tangible property apply  
2 to the management of digital assets, including:

- 3 (1) The duty of care;
- 4 (2) The duty of loyalty; and
- 5 (3) The duty of confidentiality.

6 (b) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

- 7 (1) Except as otherwise provided in §44-5B-4 of this code, is subject to the applicable  
8 terms of service;
- 9 (2) Is subject to other applicable law, including copyright law;
- 10 (3) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
- 11 (4) May not be used to impersonate the user.

12 (c) A fiduciary with authority over the property of a decedent, protected person, principal,  
13 or settlor has the right to access any digital asset in which the decedent, protected person,  
14 principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-  
15 of-service agreement.

16 (d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the  
17 property of the decedent, protected person, principal, or settlor for the purpose of applicable  
18 computer fraud and unauthorized computer access laws, including the provisions of §61-3C-1 *et*  
19 *seq.* of this code.

20 (e) A fiduciary with authority over the tangible, personal property of a decedent, protected  
21 person, principal, or settlor:

- 22 (1) Has the right to access the property and any digital asset stored in it; and

23 (2) Is an authorized user for the purpose of computer fraud and unauthorized computer  
24 access laws, including the provisions of §61-3C-1 *et seq.* of this code.

25 (f) A custodian may disclose information in an account to a fiduciary of the user when the  
26 information is required to terminate an account used to access digital assets licensed to the user.

27 (g) A fiduciary of a user may request a custodian to terminate the user's account. A request  
28 for termination must be in writing, in either physical or electronic form, and accompanied by:

29 (1) If the user is deceased, a certified copy of the death certificate of the user;

30 (2) A certified copy of the letter of appointment of the representative, court order, power  
31 of attorney, or trust instrument giving the fiduciary authority over the account; and

32 (3) If requested by the custodian:

33 (A) A number, username, address, or other unique subscriber or account identifier  
34 assigned by the custodian to identify the user's account;

35 (B) Evidence linking the account to the user; or

36 (C) A finding by the court that the user had a specific account with the custodian,  
37 identifiable by the information specified in §44-5B-15(g)(1) of this code.

**§44-5B-16. Custodian compliance and immunity.**

1 (a) Not later than 60 days after receipt of the information required under §44-5B-7 through  
2 §44-5B-15 of this code, a custodian shall comply with a request under this article from a fiduciary  
3 or designated recipient to disclose digital assets or terminate an account. If the custodian fails to  
4 comply, the fiduciary or designated recipient may apply to the court for an order directing  
5 compliance.

6 (b) An order under §44-5B-16(a) of this code directing compliance must contain a finding  
7 that compliance is not in violation of 18 U.S.C. § 2702.

8 (c) A custodian may notify the user that a request for disclosure or to terminate an account  
9 was made under this article.

10 (d) A custodian may deny a request under §44-5B-1 *et seq.* of this code from a fiduciary  
11 or designated recipient for disclosure of digital assets or to terminate an account if the custodian  
12 is aware of any lawful access to the account following the receipt of the fiduciary's request.

13 (e) This article does not limit a custodian's ability to obtain or require a fiduciary or  
14 designated recipient requesting disclosure or termination under §44-5B-1 *et seq.* of this code to  
15 obtain a court order which:

16 (1) Specifies that an account belongs to the protected person or principal;

17 (2) Specifies that there is sufficient consent from the protected person or principal to  
18 support the requested disclosure; and

19 (3) Contains a finding required by law other than this article.

20 (f) A custodian and its officers, employees, and agents are immune from liability for an act  
21 or omission done in good faith in compliance with this article.

**§44-5B-17. Uniformity of application and construction.**

1 In applying and construing this uniform act, consideration must be given to the need to  
2 promote uniformity of the law with respect to its subject matter among states that enact it.

**§44-5B-18. Relation to Electronic Signatures in Global and National Commerce Act.**

1 This article modifies, limits, or supersedes the Electronic Signatures in Global and National  
2 Commerce Act, 15 U. S. C. Section 7001 *et seq.*, but does not modify, limit, or supersede Section  
3 101(c) of that act, 15 U. S. C. Section 7001(c), or authorize electronic delivery of any of the notices  
4 described in Section 103(b) of that act, 15 U. S. C. Section 7003(b).

**§44-5B-19. Severability.**

1 If any provision of §44-5B-1 *et seq.* of this code or its application to any person or  
2 circumstance is held invalid, the invalidity does not affect other provisions or applications of this  
3 article which can be given effect without the invalid provision or application, and to this end the  
4 provisions of this article are severable.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman, Senate Committee*

.....  
*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

.....  
*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2018.

.....  
*Governor*