

1-1 By: Taylor of Collin S.B. No. 1193
1-2 (In the Senate - Filed March 1, 2017; March 9, 2017, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 10, 2017, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 10, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	Huffman	X		
1-9	Hughes	X		
1-10	Birdwell	X		
1-11	Creighton	X		
1-12	Estes	X		
1-13	Lucio	X		
1-14	Nelson	X		
1-15	Schwertner	X		
1-16	Zaffirini	X		

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the adoption of the Texas Revised Uniform Fiduciary
1-20 Access to Digital Assets Act.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. The Estates Code is amended by adding Title 4 to
1-23 read as follows:

1-24 TITLE 4. DIGITAL ASSETS

1-25 CHAPTER 2001. TEXAS REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL
1-26 ASSETS ACT

1-27 SUBCHAPTER A. GENERAL PROVISIONS

1-28 Sec. 2001.001. SHORT TITLE. This chapter may be cited as
1-29 the Texas Revised Uniform Fiduciary Access to Digital Assets Act.

1-30 Sec. 2001.002. DEFINITIONS. In this chapter:

1-31 (1) "Account" means an arrangement under a
1-32 terms-of-service agreement in which a custodian carries,
1-33 maintains, processes, receives, or stores a digital asset of the
1-34 user or provides goods or services to the user.

1-35 (2) "Agent" means an attorney in fact granted
1-36 authority to act for a principal under a durable or other power of
1-37 attorney. The term does not include an agent under a medical power
1-38 of attorney.

1-39 (3) "Carries" means to engage in the transmission of
1-40 an electronic communication.

1-41 (4) "Catalog of electronic communications" means
1-42 information that identifies each person with whom a user has had an
1-43 electronic communication, the time and date of the communication,
1-44 and the electronic address of the person.

1-45 (5) "Content of an electronic communication" means
1-46 information concerning the substance or meaning of an electronic
1-47 communication that:

1-48 (A) has been sent, uploaded, received, or
1-49 downloaded by a user;

1-50 (B) is in electronic storage by a custodian
1-51 providing an electronic communication service to the public or is
1-52 carried or maintained by a custodian providing a remote computing
1-53 service to the public; and

1-54 (C) is not readily accessible to the public.

1-55 (6) "Custodian" means a person that carries,
1-56 maintains, processes, receives, or stores a digital asset of a
1-57 user.

1-58 (7) "Designated recipient" means a person chosen by a
1-59 user using an online tool to administer digital assets of the user.

1-60 (8) "Digital asset" means an electronic record in
1-61 which an individual has a right or interest. The term does not

2-1 include an underlying asset or liability unless the asset or
 2-2 liability is itself an electronic record.

2-3 (9) "Electronic" means relating to technology having
 2-4 electrical, digital, magnetic, wireless, optical, electromagnetic,
 2-5 or similar capabilities.

2-6 (10) "Electronic communication" has the meaning
 2-7 assigned by 18 U.S.C. Section 2510(12), as it existed on January 1,
 2-8 2017.

2-9 (11) "Electronic communication service" means a
 2-10 custodian that provides to a user the ability to send or receive an
 2-11 electronic communication.

2-12 (12) "Fiduciary" means an original, additional, or
 2-13 successor personal representative, guardian, agent, or trustee.

2-14 (13) "Guardian" has the meaning assigned by Section
 2-15 1002.012, except that the term does not include a guardian of the
 2-16 person of a ward.

2-17 (14) "Information" means data, text, images, videos,
 2-18 sounds, codes, computer programs, software, databases, or the like.

2-19 (15) "Online tool" means an electronic service
 2-20 provided by a custodian that allows the user, in an agreement
 2-21 distinct from the terms-of-service agreement between the custodian
 2-22 and user, to provide directions for disclosure or nondisclosure of
 2-23 digital assets to a third person.

2-24 (16) "Person" has the meaning assigned by Section
 2-25 311.005, Government Code.

2-26 (17) "Personal representative," notwithstanding
 2-27 Section 22.031, means:

2-28 (A) an executor or independent executor;

2-29 (B) an administrator, independent administrator,
 2-30 or temporary administrator;

2-31 (C) a successor to an executor or administrator
 2-32 listed in Paragraph (A) or (B); or

2-33 (D) a person who performs functions
 2-34 substantially similar to those performed by the persons listed in
 2-35 Paragraph (A), (B), or (C) under the laws of this state, other than
 2-36 this chapter.

2-37 (18) "Power of attorney" means a record that grants an
 2-38 agent authority to act in the place of a principal with regard to
 2-39 property matters, including a durable power of attorney as provided
 2-40 by Subtitle P, Title 2. The term does not include a medical power of
 2-41 attorney.

2-42 (19) "Principal" means an individual who grants
 2-43 authority to an agent in a power of attorney.

2-44 (20) "Record" means information that is inscribed on a
 2-45 tangible medium or that is stored in an electronic or other medium
 2-46 and is retrievable in perceivable form.

2-47 (21) "Remote computing service" means a custodian that
 2-48 provides to a user computer processing services or the storage of
 2-49 digital assets by means of an electronic communications system, as
 2-50 defined by 18 U.S.C. Section 2510(14), as it existed on January 1,
 2-51 2017.

2-52 (22) "Terms-of-service agreement" means an agreement
 2-53 that controls the relationship between a user and a custodian.

2-54 (23) "Trustee" has the meaning assigned by Section
 2-55 111.004, Property Code.

2-56 (24) "User" means a person who has an account with a
 2-57 custodian.

2-58 Sec. 2001.003. APPLICABILITY. (a) This chapter applies to
 2-59 a custodian if the user resides in this state or resided in this
 2-60 state at the time of the user's death.

2-61 (b) This chapter does not apply to a digital asset of an
 2-62 employer used by an employee in the ordinary course of the
 2-63 employer's business.

2-64 Sec. 2001.004. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
 2-65 In applying and construing this chapter, consideration must be
 2-66 given to the need to promote uniformity of the law, with respect to
 2-67 the subject matter of this chapter, among states that enact a law
 2-68 based on the uniform act on which this chapter is based.

2-69 Sec. 2001.005. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL

3-1 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and
 3-2 supersedes the federal Electronic Signatures in Global and National
 3-3 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,
 3-4 limit, or supersede Section 101(c) of that Act (15 U.S.C. Section
 3-5 7001(c)) or authorize electronic delivery of any of the notices
 3-6 described in Section 103(b) of that Act (15 U.S.C. Section
 3-7 7003(b)).

3-8 SUBCHAPTER B. GENERAL PROCEDURES FOR ACCESS TO DIGITAL ASSETS

3-9 Sec. 2001.051. USER DIRECTION FOR DISCLOSURE OF DIGITAL
 3-10 ASSETS. (a) A user may use an online tool to direct the custodian
 3-11 to disclose or not to disclose to a designated recipient some or all
 3-12 of the user's digital assets, including the content of an
 3-13 electronic communication. If the online tool allows the user to
 3-14 modify or delete a direction at all times, a direction regarding
 3-15 disclosure using an online tool overrides a contrary direction by
 3-16 the user in a will, trust, power of attorney, or other record.

3-17 (b) If a user has not used an online tool to give direction
 3-18 under Subsection (a) or if the custodian has not provided an online
 3-19 tool, the user may allow or prohibit disclosure to a fiduciary of
 3-20 some or all of the user's digital assets, including the content of
 3-21 an electronic communication sent or received by the user, in a will,
 3-22 trust, power of attorney, or other record.

3-23 (c) A user's direction under Subsection (a) or (b) overrides
 3-24 a contrary provision in a terms-of-service agreement that does not
 3-25 require the user to act affirmatively and distinctly from the
 3-26 user's assent to the terms of service.

3-27 Sec. 2001.052. TERMS-OF-SERVICE AGREEMENT. (a) This
 3-28 chapter does not change or impair a right of a custodian or a user
 3-29 under a terms-of-service agreement to access and use digital assets
 3-30 of the user.

3-31 (b) This chapter does not give a fiduciary or designated
 3-32 recipient any new or expanded rights other than those held by the
 3-33 user for whom, or for whose estate or trust, the fiduciary or
 3-34 designated recipient acts or represents.

3-35 (c) A fiduciary's or designated recipient's access to
 3-36 digital assets may be modified or eliminated by a user, by federal
 3-37 law, or by a terms-of-service agreement if the user has not provided
 3-38 direction under Section 2001.051.

3-39 Sec. 2001.053. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.
 3-40 (a) When disclosing digital assets of a user under this chapter,
 3-41 the custodian may, at the custodian's sole discretion:

3-42 (1) grant a fiduciary or designated recipient full
 3-43 access to the user's account;

3-44 (2) grant a fiduciary or designated recipient partial
 3-45 access to the user's account sufficient to perform the tasks with
 3-46 which the fiduciary or designated recipient is charged; or

3-47 (3) provide a fiduciary or designated recipient a copy
 3-48 in a record of any digital asset that, on the date the custodian
 3-49 received the request for disclosure, the user could have accessed
 3-50 if the user were alive and had full capacity and access to the
 3-51 account.

3-52 (b) A custodian may assess a reasonable administrative
 3-53 charge for the cost of disclosing digital assets under this
 3-54 chapter.

3-55 (c) A custodian is not required to disclose under this
 3-56 chapter a digital asset deleted by a user.

3-57 (d) If a user directs or a fiduciary requests a custodian to
 3-58 disclose under this chapter some, but not all, of the user's digital
 3-59 assets, the custodian is not required to disclose the assets if
 3-60 segregation of the assets would impose an undue burden on the
 3-61 custodian. If the custodian believes the direction or request
 3-62 imposes an undue burden, the custodian or fiduciary may seek an
 3-63 order from the court to disclose:

3-64 (1) a subset limited by date of the user's digital
 3-65 assets;

3-66 (2) all of the user's digital assets to the fiduciary
 3-67 or designated recipient;

3-68 (3) none of the user's digital assets; or

3-69 (4) all of the user's digital assets to the court for

4-1 review in camera.

4-2 SUBCHAPTER C. PROCEDURES FOR DISCLOSURE OF DIGITAL ASSETS OF
4-3 DECEASED USER

4-4 Sec. 2001.101. DISCLOSURE OF CONTENT OF ELECTRONIC
4-5 COMMUNICATIONS OF DECEASED USER. (a) If a deceased user consented
4-6 to or a court directs disclosure of the content of an electronic
4-7 communication of the user, the custodian shall disclose to the
4-8 personal representative of the estate of the user the content of an
4-9 electronic communication sent or received by the user if the
4-10 representative gives the custodian:

4-11 (1) a written request for disclosure in physical or
4-12 electronic form;

4-13 (2) a certified copy of the death certificate of the
4-14 user;

4-15 (3) a certified copy of letters testamentary or of
4-16 administration, a small estate affidavit filed under Section
4-17 205.001, or other court order; and

4-18 (4) unless the user provided direction using an online
4-19 tool, a copy of the user's will, trust, power of attorney, or other
4-20 record evidencing the user's consent to disclosure of the content
4-21 of an electronic communication if the user consented to the
4-22 disclosure.

4-23 (b) In addition to the items required to be given to the
4-24 custodian under Subsection (a), the personal representative shall
4-25 provide the following if requested by the custodian:

4-26 (1) a number, user name, address, or other unique
4-27 subscriber or account identifier assigned by the custodian to
4-28 identify the deceased user's account;

4-29 (2) evidence linking the account to the user; or

4-30 (3) a finding by the court that:

4-31 (A) the deceased user had a specific account with
4-32 the custodian, identifiable by the information specified in
4-33 Subdivision (1);

4-34 (B) disclosure of the content of an electronic
4-35 communication of the user would not violate 18 U.S.C. Section 2701
4-36 et seq., 47 U.S.C. Section 222, or other applicable law;

4-37 (C) unless the user provided direction using an
4-38 online tool, the user consented to disclosure of the content of an
4-39 electronic communication; or

4-40 (D) disclosure of the content of an electronic
4-41 communication of the user is reasonably necessary for
4-42 administration of the estate.

4-43 Sec. 2001.102. DISCLOSURE OF OTHER DIGITAL ASSETS OF
4-44 DECEASED USER. (a) Unless the deceased user prohibited disclosure
4-45 of digital assets or the court directs otherwise, a custodian shall
4-46 disclose to the personal representative of the estate of a deceased
4-47 user a catalog of electronic communications sent or received by the
4-48 user and digital assets, other than the content of an electronic
4-49 communication, of the user if the representative gives the
4-50 custodian:

4-51 (1) a written request for disclosure in physical or
4-52 electronic form;

4-53 (2) a certified copy of the death certificate of the
4-54 user; and

4-55 (3) a certified copy of letters testamentary or of
4-56 administration, a small estate affidavit filed under Section
4-57 205.001, or other court order.

4-58 (b) In addition to the items required to be given to the
4-59 custodian under Subsection (a), the personal representative shall
4-60 provide the following if requested by the custodian:

4-61 (1) a number, user name, address, or other unique
4-62 subscriber or account identifier assigned by the custodian to
4-63 identify the deceased user's account;

4-64 (2) evidence linking the account to the user;

4-65 (3) an affidavit stating that disclosure of the user's
4-66 digital assets is reasonably necessary for administration of the
4-67 estate; or

4-68 (4) a finding by the court that:

4-69 (A) the deceased user had a specific account with

5-1 the custodian, identifiable by the information specified in
5-2 Subdivision (1); or
5-3 (B) disclosure of the user's digital assets is
5-4 reasonably necessary for administration of the estate.

5-5 SUBCHAPTER D. PROCEDURES FOR DISCLOSURE OF DIGITAL ASSETS OF
5-6 PRINCIPAL

5-7 Sec. 2001.131. DISCLOSURE OF CONTENT OF ELECTRONIC
5-8 COMMUNICATIONS OF PRINCIPAL. (a) To the extent a power of
5-9 attorney expressly grants an agent authority over the content of an
5-10 electronic communication sent or received by the principal and
5-11 unless directed otherwise by the principal or the court, a
5-12 custodian shall disclose to the agent the content of an electronic
5-13 communication if the agent gives the custodian:

5-14 (1) a written request for disclosure in physical or
5-15 electronic form;

5-16 (2) an original or copy of the power of attorney
5-17 expressly granting the agent authority over the content of an
5-18 electronic communication of the principal; and

5-19 (3) a certification by the agent, under penalty of
5-20 perjury, that the power of attorney is in effect.

5-21 (b) In addition to the items required to be given to the
5-22 custodian under Subsection (a), the agent shall provide the
5-23 following if requested by the custodian:

5-24 (1) a number, user name, address, or other unique
5-25 subscriber or account identifier assigned by the custodian to
5-26 identify the principal's account; or

5-27 (2) evidence linking the account to the principal.

5-28 Sec. 2001.132. DISCLOSURE OF OTHER DIGITAL ASSETS OF
5-29 PRINCIPAL. (a) Unless otherwise ordered by the court, directed by
5-30 the principal, or provided by a power of attorney, a custodian shall
5-31 disclose to an agent with specific authority over digital assets or
5-32 general authority to act on behalf of a principal a catalog of
5-33 electronic communications sent or received by the principal and
5-34 digital assets of the principal, other than the content of an
5-35 electronic communication, if the agent gives the custodian:

5-36 (1) a written request for disclosure in physical or
5-37 electronic form;

5-38 (2) an original or copy of the power of attorney that
5-39 gives the agent specific authority over digital assets or general
5-40 authority to act on behalf of the principal; and

5-41 (3) a certification by the agent, under penalty of
5-42 perjury, that the power of attorney is in effect.

5-43 (b) In addition to the items required to be given to the
5-44 custodian under Subsection (a), the agent shall provide the
5-45 following if requested by the custodian:

5-46 (1) a number, user name, address, or other unique
5-47 subscriber or account identifier assigned by the custodian to
5-48 identify the principal's account; or

5-49 (2) evidence linking the account to the principal.

5-50 SUBCHAPTER E. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST

5-51 Sec. 2001.151. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST
5-52 WHEN TRUSTEE IS ORIGINAL USER. Unless otherwise ordered by the
5-53 court or provided in a trust, a custodian shall disclose to a
5-54 trustee that is an original user of an account any digital asset of
5-55 the account held in trust, including a catalog of electronic
5-56 communications of the trustee and the content of an electronic
5-57 communication.

5-58 Sec. 2001.152. DISCLOSURE OF CONTENT OF ELECTRONIC
5-59 COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE IS NOT ORIGINAL USER.

5-60 (a) Unless otherwise ordered by the court, directed by the user,
5-61 or provided in a trust, a custodian shall disclose to a trustee that
5-62 is not an original user of an account the content of an electronic
5-63 communication sent or received by an original or successor user and
5-64 carried, maintained, processed, received, or stored by the
5-65 custodian in the account of the trust if the trustee gives the
5-66 custodian:

5-67 (1) a written request for disclosure in physical or
5-68 electronic form;

5-69 (2) a certified copy of the trust instrument or a

6-1 certification of trust under Section 114.086, Property Code, that
6-2 includes consent to disclosure of the content of an electronic
6-3 communication to the trustee; and

6-4 (3) a certification by the trustee, under penalty of
6-5 perjury, that the trust exists and the trustee is a currently acting
6-6 trustee of the trust.

6-7 (b) In addition to the items required to be given to the
6-8 custodian under Subsection (a), the trustee shall provide the
6-9 following if requested by the custodian:

6-10 (1) a number, user name, address, or other unique
6-11 subscriber or account identifier assigned by the custodian to
6-12 identify the trust's account; or

6-13 (2) evidence linking the account to the trust.

6-14 Sec. 2001.153. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN
6-15 TRUST WHEN TRUSTEE IS NOT ORIGINAL USER. (a) Unless otherwise
6-16 ordered by the court, directed by the user, or provided in a trust,
6-17 a custodian shall disclose to a trustee that is not an original user
6-18 of an account a catalog of electronic communications sent or
6-19 received by an original or successor user and stored, carried, or
6-20 maintained by the custodian in an account of the trust and any
6-21 digital assets in which the trust has a right or interest, other
6-22 than the content of an electronic communication, if the trustee
6-23 gives the custodian:

6-24 (1) a written request for disclosure in physical or
6-25 electronic form;

6-26 (2) a certified copy of the trust instrument or a
6-27 certification of trust under Section 114.086, Property Code; and

6-28 (3) a certification by the trustee, under penalty of
6-29 perjury, that the trust exists and the trustee is a currently acting
6-30 trustee of the trust.

6-31 (b) In addition to the items required to be given to the
6-32 custodian under Subsection (a), the trustee shall provide the
6-33 following if requested by the custodian:

6-34 (1) a number, user name, address, or other unique
6-35 subscriber or account identifier assigned by the custodian to
6-36 identify the trust's account; or

6-37 (2) evidence linking the account to the trust.

6-38 SUBCHAPTER F. DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN
6-39 Sec. 2001.171. DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN.
6-40 (a) After an opportunity for a hearing under Title 3, the court may
6-41 grant the guardian of a ward access to the digital assets of the
6-42 ward.

6-43 (b) Unless otherwise ordered by the court or directed by the
6-44 user, a custodian shall disclose to the guardian of a ward the
6-45 catalog of electronic communications sent or received by the ward
6-46 and any digital assets in which the ward has a right or interest,
6-47 other than the content of an electronic communication, if the
6-48 guardian gives the custodian:

6-49 (1) a written request for disclosure in physical or
6-50 electronic form; and

6-51 (2) a certified copy of the court order that gives the
6-52 guardian authority over the digital assets of the ward.

6-53 (c) In addition to the items required to be given to the
6-54 custodian under Subsection (b), the guardian shall provide the
6-55 following if requested by the custodian:

6-56 (1) a number, user name, address, or other unique
6-57 subscriber or account identifier assigned by the custodian to
6-58 identify the account of the ward; or

6-59 (2) evidence linking the account to the ward.

6-60 (d) The guardian of a ward may request a custodian of the
6-61 digital assets of the ward to suspend or terminate an account of the
6-62 ward for good cause. A request made under this section must be
6-63 accompanied by a certified copy of the court order giving the
6-64 guardian authority over the ward's digital assets.

6-65 SUBCHAPTER G. DUTY AND AUTHORITY OF FIDUCIARY AND OTHERS REGARDING
6-66 DIGITAL ASSETS

6-67 Sec. 2001.201. FIDUCIARY DUTY AND AUTHORITY. (a) The
6-68 legal duties imposed on a fiduciary charged with managing tangible
6-69 property apply to the management of digital assets, including:

- 7-1 (1) the duty of care;
 7-2 (2) the duty of loyalty; and
 7-3 (3) the duty of confidentiality.

7-4 (b) A fiduciary's or designated recipient's authority with
 7-5 respect to a digital asset of a user:

7-6 (1) except as otherwise provided by Section 2001.051,
 7-7 is subject to the applicable terms of service;

7-8 (2) is subject to other applicable law, including
 7-9 copyright law;

7-10 (3) in the case of a fiduciary, is limited by the scope
 7-11 of the fiduciary's duties; and

7-12 (4) may not be used to impersonate the user.

7-13 (c) A fiduciary with authority over the property of a
 7-14 decedent, ward, principal, or settlor has the right to access any
 7-15 digital asset in which the decedent, ward, principal, or settlor
 7-16 has or had a right or interest and that is not held by a custodian or
 7-17 subject to a terms-of-service agreement.

7-18 (d) A fiduciary acting within the scope of the fiduciary's
 7-19 duties is an authorized user of the property of the decedent, ward,
 7-20 principal, or settlor for the purpose of applicable computer fraud
 7-21 and unauthorized computer access laws, including all laws of this
 7-22 state governing unauthorized computer access.

7-23 (e) A fiduciary with authority over the tangible personal
 7-24 property of a decedent, ward, principal, or settlor:

7-25 (1) has the right to access the property and any
 7-26 digital asset stored in it; and

7-27 (2) is an authorized user for the purpose of
 7-28 applicable computer fraud and unauthorized computer access laws,
 7-29 including all laws of this state governing unauthorized computer
 7-30 access.

7-31 Sec. 2001.202. AUTHORITY TO TERMINATE ACCOUNT. (a) A
 7-32 custodian may disclose information in an account to a fiduciary of
 7-33 the user when the information is required to terminate an account
 7-34 used to access digital assets licensed to the user.

7-35 (b) A fiduciary of a user may request a custodian to
 7-36 terminate the user's account. A request for termination must be in
 7-37 writing, in physical or electronic form, and accompanied by:

7-38 (1) if the user is deceased, a certified copy of the
 7-39 death certificate of the user; and

7-40 (2) one of the following giving the fiduciary
 7-41 authority over the account:

7-42 (A) a certified copy of letters testamentary or
 7-43 of administration, a small estate affidavit filed under Section
 7-44 205.001, or other court order;

7-45 (B) a power of attorney; or

7-46 (C) the trust instrument.

7-47 (c) In addition to the items required to accompany a
 7-48 termination request under Subsection (b), the fiduciary shall
 7-49 provide the following if requested by the custodian:

7-50 (1) a number, user name, address, or other unique
 7-51 subscriber or account identifier assigned by the custodian to
 7-52 identify the user's account;

7-53 (2) evidence linking the account to the user; or

7-54 (3) a finding by the court that the user had a specific
 7-55 account with the custodian, identifiable by the information
 7-56 specified in Subdivision (1).

7-57 SUBCHAPTER H. CUSTODIAN COMPLIANCE AND IMMUNITY REGARDING DIGITAL
 7-58 ASSETS

7-59 Sec. 2001.231. CUSTODIAN COMPLIANCE AND IMMUNITY. (a) Not
 7-60 later than 60 days after receipt of the information required under
 7-61 Subchapter C, D, E, F, or G, a custodian shall comply with a request
 7-62 under this chapter from a fiduciary or designated recipient to
 7-63 disclose digital assets or terminate an account. If the custodian
 7-64 fails to comply, the fiduciary or designated recipient may apply to
 7-65 the court for an order directing compliance.

7-66 (b) An order under Subsection (a) directing compliance must
 7-67 contain a finding that compliance is not in violation of 18 U.S.C.
 7-68 Section 2702.

7-69 (c) A custodian may notify the user that a request for

8-1 disclosure or to terminate an account was made under this chapter.
8-2 (d) A custodian may deny a request under this chapter from a
8-3 fiduciary or designated recipient for disclosure of digital assets
8-4 or to terminate an account if the custodian is aware of any lawful
8-5 access to the account following the receipt of the request.

8-6 (e) This chapter does not limit a custodian's ability to
8-7 obtain or require a fiduciary or designated recipient requesting
8-8 disclosure or termination under this chapter to obtain a court
8-9 order that:

- 8-10 (1) specifies that an account belongs to the ward or
- 8-11 principal;
- 8-12 (2) specifies that there is sufficient consent from
- 8-13 the ward or principal to support the requested disclosure; and
- 8-14 (3) contains a finding required by a law other than
- 8-15 this chapter.

8-16 Sec. 2001.232. IMMUNITY FROM LIABILITY. A custodian and
8-17 the custodian's officers, employees, and agents are immune from
8-18 liability for an act or omission done in good faith in compliance
8-19 with this chapter.

8-20 SECTION 2. Section 752.051, Estates Code, is amended to
8-21 read as follows:

8-22 Sec. 752.051. FORM. The following form is known as a
8-23 "statutory durable power of attorney":

8-24 STATUTORY DURABLE POWER OF ATTORNEY
8-25 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING.
8-26 THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P,
8-27 TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE
8-28 POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT
8-29 AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS
8-30 FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO
8-31 DO SO.

8-32 You should select someone you trust to serve as your agent
8-33 (attorney in fact). Unless you specify otherwise, generally the
8-34 agent's (attorney in fact's) authority will continue until:

- 8-35 (1) you die or revoke the power of attorney;
- 8-36 (2) your agent (attorney in fact) resigns or is unable
8-37 to act for you; or
- 8-38 (3) a guardian is appointed for your estate.

8-39 I, _____ (insert your name and address), appoint
8-40 _____ (insert the name and address of the person appointed) as
8-41 my agent (attorney in fact) to act for me in any lawful way with
8-42 respect to all of the following powers that I have initialed below.

8-43 TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN
8-44 FRONT OF (O) [~~(N)~~] AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS
8-45 LISTED IN (A) THROUGH (N) [~~(M)~~].

8-46 TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE
8-47 POWER YOU ARE GRANTING.

8-48 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE
8-49 POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- 8-50 _____ (A) Real property transactions;
- 8-51 _____ (B) Tangible personal property transactions;
- 8-52 _____ (C) Stock and bond transactions;
- 8-53 _____ (D) Commodity and option transactions;
- 8-54 _____ (E) Banking and other financial institution
8-55 transactions;
- 8-56 _____ (F) Business operating transactions;
- 8-57 _____ (G) Insurance and annuity transactions;
- 8-58 _____ (H) Estate, trust, and other beneficiary transactions;
- 8-59 _____ (I) Claims and litigation;
- 8-60 _____ (J) Personal and family maintenance;
- 8-61 _____ (K) Benefits from social security, Medicare, Medicaid,
8-62 or other governmental programs or civil or military service;
- 8-63 _____ (L) Retirement plan transactions;
- 8-64 _____ (M) Tax matters;
- 8-65 _____ (N) Digital assets and the content of an electronic
8-66 communication;

8-67 _____ (O) [~~(N)~~] ALL OF THE POWERS LISTED IN (A) THROUGH (N)
8-68 [~~(M)~~]. YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER
8-69 POWER IF YOU INITIAL LINE (O) [~~(N)~~].

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

I grant my agent (attorney in fact) the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

Blank lines for special instructions.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

Signed this _____ day of _____, _____

(your signature)

State of _____

County of _____

This document was acknowledged before me on _____(date) by

(name of principal)

(signature of notarial officer)

(Seal, if any, of notary)

(printed name)

My commission expires: _____

IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

10-1 Agent's Duties

10-2 When you accept the authority granted under this power of
 10-3 attorney, you establish a "fiduciary" relationship with the
 10-4 principal. This is a special legal relationship that imposes on you
 10-5 legal duties that continue until you resign or the power of attorney
 10-6 is terminated or revoked by the principal or by operation of law. A
 10-7 fiduciary duty generally includes the duty to:

10-8 (1) act in good faith;
 10-9 (2) do nothing beyond the authority granted in this
 10-10 power of attorney;

10-11 (3) act loyally for the principal's benefit;
 10-12 (4) avoid conflicts that would impair your ability to
 10-13 act in the principal's best interest; and

10-14 (5) disclose your identity as an agent or attorney in
 10-15 fact when you act for the principal by writing or printing the name
 10-16 of the principal and signing your own name as "agent" or "attorney
 10-17 in fact" in the following manner:

10-18 (Principal's Name) by (Your Signature) as Agent (or as
 10-19 Attorney in Fact)

10-20 In addition, the Durable Power of Attorney Act (Subtitle P,
 10-21 Title 2, Estates Code) requires you to:

10-22 (1) maintain records of each action taken or decision
 10-23 made on behalf of the principal;

10-24 (2) maintain all records until delivered to the
 10-25 principal, released by the principal, or discharged by a court; and

10-26 (3) if requested by the principal, provide an
 10-27 accounting to the principal that, unless otherwise directed by the
 10-28 principal or otherwise provided in the Special Instructions, must
 10-29 include:

10-30 (A) the property belonging to the principal that
 10-31 has come to your knowledge or into your possession;

10-32 (B) each action taken or decision made by you as
 10-33 agent or attorney in fact;

10-34 (C) a complete account of receipts,
 10-35 disbursements, and other actions of you as agent or attorney in fact
 10-36 that includes the source and nature of each receipt, disbursement,
 10-37 or action, with receipts of principal and income shown separately;

10-38 (D) a listing of all property over which you have
 10-39 exercised control that includes an adequate description of each
 10-40 asset and the asset's current value, if known to you;

10-41 (E) the cash balance on hand and the name and
 10-42 location of the depository at which the cash balance is kept;

10-43 (F) each known liability;

10-44 (G) any other information and facts known to you
 10-45 as necessary for a full and definite understanding of the exact
 10-46 condition of the property belonging to the principal; and

10-47 (H) all documentation regarding the principal's
 10-48 property.

10-49 Termination of Agent's Authority

10-50 You must stop acting on behalf of the principal if you learn
 10-51 of any event that terminates this power of attorney or your
 10-52 authority under this power of attorney. An event that terminates
 10-53 this power of attorney or your authority to act under this power of
 10-54 attorney includes:

10-55 (1) the principal's death;

10-56 (2) the principal's revocation of this power of
 10-57 attorney or your authority;

10-58 (3) the occurrence of a termination event stated in
 10-59 this power of attorney;

10-60 (4) if you are married to the principal, the
 10-61 dissolution of your marriage by court decree of divorce or
 10-62 annulment;

10-63 (5) the appointment and qualification of a permanent
 10-64 guardian of the principal's estate; or

10-65 (6) if ordered by a court, the suspension of this power
 10-66 of attorney on the appointment and qualification of a temporary
 10-67 guardian until the date the term of the temporary guardian expires.

10-68 Liability of Agent

10-69 The authority granted to you under this power of attorney is

11-1 specified in the Durable Power of Attorney Act (Subtitle P, Title 2,
11-2 Estates Code). If you violate the Durable Power of Attorney Act or
11-3 act beyond the authority granted, you may be liable for any damages
11-4 caused by the violation or subject to prosecution for
11-5 misapplication of property by a fiduciary under Chapter 32 of the
11-6 Texas Penal Code.

11-7 THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER
11-8 THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL
11-9 RESPONSIBILITIES OF AN AGENT.

11-10 SECTION 3. Subchapter C, Chapter 752, Estates Code, is
11-11 amended by adding Section 752.1145 to read as follows:

11-12 Sec. 752.1145. DIGITAL ASSET TRANSACTIONS. (a) In this
11-13 section, "digital asset" has the meaning assigned by Section
11-14 2001.002.

11-15 (b) The language conferring authority with respect to
11-16 digital assets in a statutory durable power of attorney empowers
11-17 the attorney in fact or agent, without further reference to a
11-18 specific digital asset, to access digital assets as provided in
11-19 Chapter 2001.

11-20 SECTION 4. Section 752.115, Estates Code, is amended to
11-21 read as follows:

11-22 Sec. 752.115. EXISTING INTERESTS; FOREIGN INTERESTS. The
11-23 powers described by Sections 752.102-752.1145 [~~752.102-752.114~~]
11-24 may be exercised equally with respect to an interest the principal
11-25 has at the time the durable power of attorney is executed or
11-26 acquires later, whether or not:

- 11-27 (1) the property is located in this state; or
- 11-28 (2) the powers are exercised or the durable power of
11-29 attorney is executed in this state.

11-30 SECTION 5. Section 1151.101, Estates Code, is amended by
11-31 amending Subsection (a) and adding Subsection (c) to read as
11-32 follows:

11-33 (a) Subject to Subsection (b), the guardian of the estate of
11-34 a ward is entitled to:

- 11-35 (1) possess and manage all property belonging to the
11-36 ward;
- 11-37 (2) collect all debts, rentals, or claims that are due
11-38 to the ward;
- 11-39 (3) enforce all obligations in favor of the ward;
- 11-40 [~~and~~]
- 11-41 (4) bring and defend suits by or against the ward; and
- 11-42 (5) access the ward's digital assets as provided by
11-43 Chapter 2001.

11-44 (c) In this section, "digital asset" has the meaning
11-45 assigned by Section 2001.002.

11-46 SECTION 6. Subchapter A, Chapter 113, Property Code, is
11-47 amended by adding Section 113.031 to read as follows:

11-48 Sec. 113.031. DIGITAL ASSETS. (a) In this section,
11-49 "digital asset" has the meaning assigned by Section 2001.002,
11-50 Estates Code.

11-51 (b) A trustee may access digital assets as provided by
11-52 Chapter 2001, Estates Code.

11-53 SECTION 7. Chapter 2001, Estates Code, as added by this Act,
11-54 applies to:

- 11-55 (1) a fiduciary acting under a will or power of
11-56 attorney executed before, on, or after the effective date of this
11-57 Act;
- 11-58 (2) a personal representative acting for a decedent
11-59 who died before, on, or after the effective date of this Act;
- 11-60 (3) a guardian appointed to act for a ward in a
11-61 guardianship proceeding commenced before, on, or after the
11-62 effective date of this Act; and
- 11-63 (4) a trustee acting under a trust created before, on,
11-64 or after the effective date of this Act.

11-65 SECTION 8. This Act takes effect September 1, 2017.

11-66 * * * * *