

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 253

AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 29-1-8-1, AS AMENDED BY P.L.51-2014, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) Forty-five (45) days after the death of a decedent and upon being presented an affidavit that complies with subsection (b), a person:

- (1) indebted to the decedent; or
- (2) having possession of personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action belonging to the decedent;

shall make payment of the indebtedness or deliver the personal property or the instrument evidencing a debt, an obligation, a stock, or a chose in action to a distributee claiming to be entitled to payment or delivery of property of the decedent as alleged in the affidavit.

(b) The affidavit required by subsection (a) must be an affidavit made by or on behalf of the distributee and must state the following:

- (1) That the value of the gross probate estate, wherever located (less liens and encumbrances), does not exceed fifty thousand dollars (\$50,000).
- (2) That forty-five (45) days have elapsed since the death of the decedent.

SEA 253



(3) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.

(4) The name and address of each distributee that is entitled to a share of the property and the part of the property to which each distributee is entitled.

(5) That the affiant has notified each distributee identified in the affidavit of the affiant's intention to present an affidavit under this section.

(6) That the affiant is entitled to payment or delivery of the property on behalf of each distributee identified in the affidavit.

(c) If a motor vehicle or watercraft (as defined in IC 9-13-2-198.5) is part of the estate, nothing in this section shall prohibit a transfer of the certificate of title to the motor vehicle if five (5) days have elapsed since the death of the decedent and no appointment of a personal representative is contemplated. A transfer under this subsection shall be made by the bureau of motor vehicles upon receipt of an affidavit containing a statement of the conditions required by subsection (b)(1) and (b)(6). The affidavit must be duly executed by the distributees of the estate.

(d) A transfer agent of a security shall change the registered ownership on the books of a corporation from the decedent to a distributee upon the presentation of an affidavit as provided in subsection (a).

(e) For the purposes of subsection (a), an insurance company that, by reason of the death of the decedent, becomes obligated to pay a death benefit to the estate of the decedent is considered a person indebted to the decedent.

(f) For purposes of subsection (a), property in a safe deposit box rented by a decedent from a financial institution organized or reorganized under the law of any state (as defined in IC 28-2-17-19) or the United States is considered personal property belonging to the decedent in the possession of the financial institution.

(g) For purposes of subsection (a), a distributee has the same rights as a personal representative under IC 32-39 to access a digital asset (as defined in IC 32-39-1-10) of the decedent.

SECTION 2. IC 29-1-13-1.1, AS ADDED BY P.L.12-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1.1. (a) As used in this section, "custodian" means any person who electronically stores the documents or information of another person:

(b) A custodian shall provide IC 32-39-2-4 and IC 32-39-2-5 apply



to the **right of a personal representative who is acting on behalf** of the estate of a deceased person **who was domiciled in Indiana at the time of the person's death**; to access: to or copies of any documents or information of the deceased person stored electronically by the custodian upon receipt by the custodian of:

(1) a written request for access or copies made by the personal representative; accompanied by a copy of the death certificate and a certified copy of the personal representative's letters testamentary; or **the content of an electronic communication (as defined in IC 32-39-1-6);**

(2) an order of a court having probate jurisdiction of the deceased person's estate: **a catalogue of electronic communications (as defined in IC 32-39-1-5); or**

(3) **any other digital asset (as defined in IC 32-39-1-10);**

of the deceased person.

(c) A custodian may not destroy or dispose of the electronically stored documents or information of the deceased person for two (2) years after the custodian receives a request or order under subsection (b):

(d) Nothing in this section shall be construed to require a custodian to disclose any information:

(1) in violation of any applicable federal law; or

(2) to which the deceased person would not have been permitted access in the ordinary course of business by the custodian:

SECTION 3. IC 29-3-1-1.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 1.6. "Catalogue of electronic communications" has the meaning set forth in IC 32-39-1-5.**

SECTION 4. IC 29-3-1-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 2.7. "Content of an electronic communication" has the meaning set forth in IC 32-39-1-6.**

SECTION 5. IC 29-3-1-4.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 4.1. "Digital asset" has the meaning set forth in IC 32-39-1-10.**

SECTION 6. IC 29-3-8-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 10. (a) IC 32-39-2-11 applies to the right of a guardian to access:**

(1) **the content of an electronic communication;**

(2) **a catalogue of electronic communications; or**



**(3) any other digital asset;
of a protected person.**

(b) This article:

(1) does not confer upon a guardian the power to access:

- (A) the content of an electronic communication;**
- (B) a catalogue of electronic communications; or**
- (C) any other digital asset;**

of a protected person unless a court expressly confers the power upon the guardian under IC 29-3-9-4.1; and

(2) confers upon a guardian the power to access:

- (A) the content of an electronic communication;**
- (B) a catalogue of electronic communications; or**
- (C) any other digital asset;**

of a protected person only to the extent that the court expressly confers the power upon the guardian under IC 29-3-9-4.1.

(c) For purposes of section 8 of this chapter, a power expressly conferred by a court upon a guardian under IC 29-3-9-4.1 is considered an additional responsibility and power within the meaning of section 8(a)(1) of this chapter.

SECTION 7. IC 29-3-9-4.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 4.1. (a) After notice to interested persons and upon authorization of a court, a guardian may access:**

- (1) the content of an electronic communication;**
- (2) a catalogue of electronic communications; or**
- (3) any other digital asset;**

of a protected person as provided in the order of the court. The court's authorization may apply generally or be restricted in scope.

(b) Before approving a guardian's exercise of the power to access an item described in subsection (a)(1) through (a)(3), the court shall consider primarily the decision that the protected person would have made, to the extent that the decision the protected person would have made can be ascertained.

SECTION 8. IC 30-4-3-3, AS AMENDED BY P.L.51-2014, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 3. (a) Except as provided in the terms of the trust and subject to subsection (c), a trustee has the power to perform without court authorization, except as provided in sections 4(b) and 5(a) of this chapter, every act necessary or appropriate for the purposes of the trust including, by way of illustration and not of limitation, the following powers:**



- (1) The power to:
 - (A) deal with the trust estate;
 - (B) buy, sell, or exchange and convey or transfer all property (real, personal, or mixed) for cash or on credit and at public or private sale with or without notice; and
 - (C) invest and reinvest the trust estate.
- (2) The power to receive additions to the assets of the trust.
- (3) The power to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest.
- (4) The power to manage real property in every way, including:
 - (A) the adjusting of boundaries;
 - (B) erecting, altering, or demolishing buildings;
 - (C) dedicating of streets, alleys, or other public uses;
 - (D) subdividing;
 - (E) developing;
 - (F) obtaining vacation of plats;
 - (G) granting of easements and rights-of-way;
 - (H) partitioning;
 - (I) entering into party wall agreements; and
 - (J) obtaining title insurance for trust property.
- (5) The power to:
 - (A) grant options concerning disposition of trust property, including the sale of covered security options; and
 - (B) take options for acquisition of trust property, including the purchase back of previously sold covered security options.
- (6) The power to enter into a lease as lessor or lessee, with or without option to renew.
- (7) The power to enter into arrangements for exploration and removal of minerals or other natural resources and enter into a pooling or unitization agreement.
- (8) The power to continue the operation or management of any business or other enterprise placed in trust.
- (9) The power to:
 - (A) borrow money, to be repaid from trust property or otherwise; and
 - (B) encumber, mortgage, pledge, or grant a security interest in trust property in connection with the exercise of any power.
- (10) The power to:
 - (A) advance money for the benefit of the trust estate and for all expenses or losses sustained in the administration of the trust; and



- (B) collect any money advanced, without interest or with interest, at no more than the lowest rate prevailing when advanced.
- (11) The power to prosecute or defend actions, claims, or proceedings for the protection of:
- (A) trust property; and
 - (B) the trustee in the performance of the trustee's duties.
- (12) The power to:
- (A) pay or contest any claim;
 - (B) settle a claim by or against the trust by compromise or arbitration; and
 - (C) abandon or release, totally or partially, any claim belonging to the trust.
- (13) The power to insure the:
- (A) trust estate against damage or loss; and
 - (B) trustee against liability with respect to third persons.
- (14) The power to pay taxes, assessments, and other expenses incurred in the:
- (A) acquisition, retention, and maintenance of the trust property; and
 - (B) administration of the trust.
- (15) The power to:
- (A) vote securities, in person or by a general or special proxy;
 - (B) hold the securities in the name of a nominee if the trustee is a corporate trustee; and
 - (C) effect or approve, and deposit securities in connection with, any change in the form of the corporation, including:
 - (i) dissolution;
 - (ii) liquidation;
 - (iii) reorganization;
 - (iv) acquisition; and
 - (v) merger.
- (16) The power to employ persons, including:
- (A) attorneys;
 - (B) accountants;
 - (C) investment advisors; and
 - (D) agents;
- to advise and assist the trustee in the performance of the trustee's duties.
- (17) The power to effect distribution of property in cash, in kind, or partly in cash and partly in kind, in divided or undivided interests.



- (18) The power to execute and deliver all instruments necessary or appropriate to accomplishing or facilitating the exercise of the trustee's powers.
- (19) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or another form of business or enterprise, the power to:
- (A) continue the business or enterprise; and
 - (B) take any action that may be taken by shareholders, members, or property owners, including:
 - (i) merging;
 - (ii) dissolving; or
 - (iii) changing the form of business organization or contributing additional capital.
- (20) With respect to possible liability for violation of environmental law, the power to:
- (A) inspect or investigate property:
 - (i) the trustee holds or has been asked to hold; or
 - (ii) owned or operated by an organization in which the trustee holds an interest or has been asked to hold an interest;
 to determine the application of environmental law with respect to the property;
 - (B) take action to prevent, abate, or remedy an actual or potential violation of an environmental law affecting property held directly or indirectly by the trustee before or after the assertion of a claim or the initiation of governmental enforcement;
 - (C) decline to accept property into the trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;
 - (D) compromise claims against the trust that may be asserted for an alleged violation of environmental law; and
 - (E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.
- (21) The power to exercise elections with respect to federal, state, and local taxes.
- (22) The power to select a mode of payment under any employee benefit plan or retirement plan, annuity, or life insurance payable to the trustee and exercise rights under the plan, annuity, or insurance, including the right to:
- (A) indemnification:
 - (i) for expenses; and



(ii) against liabilities; and

(B) take appropriate action to collect the proceeds.

(23) The power to make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee determines fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of the loans.

(24) The power to pledge trust property to guarantee loans made by others to the beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of the loans.

(25) The power to:

(A) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction;

(B) confer on the appointed trustee all the appointing trustee's powers and duties;

(C) require the appointed trustee to furnish security; and

(D) remove the appointed trustee.

(26) With regard to a beneficiary who is under a legal disability or whom the trustee reasonably believes is incapacitated, the power to pay an amount distributable to the beneficiary by:

(A) paying the amount directly to the beneficiary;

(B) applying the amount for the beneficiary's benefit;

(C) paying the amount to the beneficiary's guardian;

(D) paying the amount to the beneficiary's custodian under IC 30-2-8.5 to create a custodianship or custodial trust;

(E) paying the amount to an adult relative or another person having legal or physical care or custody of the beneficiary to be expended on the beneficiary's behalf, if the trustee does not know of a guardian, custodian, or custodial trustee; or

(F) managing the amount as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(27) The power to:

(A) combine at least two (2) trusts into one (1) trust; or

(B) divide one (1) trust into at least two (2) trusts;

after notice to the qualified beneficiaries, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust.

(b) Any act under subsection (a)(4), an option under subsection (a)(5), a lease under subsection (a)(6), an arrangement under



subsection (a)(7), and an encumbrance, mortgage, pledge, or security interest under subsection (a)(9) may be for a term either within or extending beyond the term of the trust.

(c) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for any trust, the trustee thereof shall exercise the judgment and care required by IC 30-4-3.5. Within the limitations of the foregoing standard, the trustee is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate obligations, stocks, preferred or common, and real estate mortgages, which persons of prudence, discretion, and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, the trustee is authorized to retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. Within the limitations of the foregoing standard, the trustee is authorized to sell covered security options and to purchase back previously sold covered security options.

(d) If a distribution of particular trust assets is to be made to two (2) or more beneficiaries entitled to receive fractional shares in those assets, the trustee may distribute the particular assets without distributing to each beneficiary a pro rata share of each asset. However, the trustee shall:

- (1) distribute to each beneficiary a pro rata share of the total fair market value of all of the particular assets as of the date of distribution; and
- (2) cause the distribution to result in a fair and equitable division among the beneficiaries of capital gain or loss on the assets.

(e) If the trust is terminated or partially terminated, the trustee may send to the beneficiaries a proposal for distribution. If the proposal for distribution informs the beneficiary that the beneficiary:

- (1) has a right to object to the proposed distribution; and
- (2) must object not later than thirty (30) days after the proposal for distribution was sent;

the right of the beneficiary to object to the proposed distribution terminates if the beneficiary fails to notify the trustee of an objection within the time limit set forth in subdivision (2).

(f) When any real or personal property subject to a lien (as defined by IC 29-1-17-9(a)) is specifically distributable, the distributee shall take the property subject to the lien unless the terms of the trust provide expressly or by necessary implication that the lien be otherwise paid. If:



- (1) an event occurs that makes the property distributable; and
- (2) the holder of a lien on the property receives payment on a claim based upon the obligation secured by the lien;

the property subject to the lien shall be charged with the reimbursement to the trust of the amount of the payment for the benefit of the beneficiaries entitled to the distribution, unless the terms of the trust provide expressly or by necessary implication that the payment be charged against the residue of the trust estate.

(g) For purposes of subsection (f), a general directive or authority in the trust for payment of debts does not imply an intent that the distribution of property subject to a lien be made free from the lien.

(h) IC 32-39-2-8, IC 32-39-2-9, and IC 32-39-2-10 apply to the right of a trustee acting under a trust to access:

- (1) the content of an electronic communication (as defined in IC 32-39-1-6);**
- (2) a catalogue of electronic communications (as defined in IC 32-39-1-5); or**
- (3) any other digital asset (as defined in IC 32-39-1-10).**

SECTION 9. IC 30-5-2-2.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 2.3. "Catalogue of electronic communications" has the meaning set forth in IC 32-39-1-5.**

SECTION 10. IC 30-5-2-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 2.7. "Content of an electronic communication" has the meaning set forth in IC 32-39-1-6.**

SECTION 11. IC 30-5-2-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 3.5. "Digital asset" has the meaning set forth in IC 32-39-1-10.**

SECTION 12. IC 30-5-3-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 8. (a) IC 32-39-2-6 applies to the right of an attorney in fact to access the content of an electronic communication of the principal.**

(b) IC 32-39-2-7 applies to the right of an attorney in fact to access:

- (1) a catalogue of electronic communications sent or received by the principal; and**
- (2) a digital asset in which the principal has a right or interest other than:**
 - (A) the information described in subsection (a); or**



(B) a digital asset described in subdivision (1).

SECTION 13. IC 30-5-5-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 14.5. (a) Language conferring general authority with respect to electronic records, reports, and statements authorizes the attorney in fact to do the following:**

- (1) Gain access to any computer, storage device, network, communications device, or other computing machinery that the principal owns, leases, or otherwise has license to access.**
- (2) Gain access to any user account the principal maintains with an online service provider.**
- (3) Access, retrieve, copy, or store:**
 - (A) the content of an electronic communication of the principal;**
 - (B) a catalogue of electronic communications sent or received by the principal; or**
 - (C) any other digital asset in which the principal has a right or interest.**
- (4) Perform any act in connection with the preparation, execution, filing, storage, or other use of electronic records, reports, and statements of or concerning the principal's affairs that the attorney in fact may perform in connection with the preparation, execution, filing, storage, or other use of written records, reports, and statements of or concerning the principal's affairs.**

(b) The powers described in this section are exercisable equally with respect to electronic records, reports, or statements of or concerning the affairs of the principal at the time of the giving of the power of attorney or are created after that time, whether arising in Indiana or in another jurisdiction.

SECTION 14. IC 32-39 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

ARTICLE 39. REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

Chapter 1. Application and Definitions

Sec. 1. (a) This article applies to the following:

- (1) A fiduciary acting under a will or power of attorney, regardless of when the will or power of attorney was executed.**
- (2) A personal representative acting for a decedent, regardless of the date of death of the decedent.**
- (3) A guardianship proceeding, regardless of when the**



guardianship proceeding commenced or whether the guardianship proceeding is pending.

(4) A trustee acting under a trust, regardless of when the trust was created.

(b) This article applies to a custodian that carries, maintains, processes, receives, or stores a digital asset of a user if the user:

(1) resides in Indiana; or

(2) resided in Indiana at the time of the user's death.

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

Sec. 2. As used in this article, "account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

Sec. 3. As used in this article, "attorney in fact" includes an attorney in fact granted authority under a durable power of attorney or a nondurable power of attorney.

Sec. 4. As used in this article, "carries" means engages in the transmission of an electronic communication.

Sec. 5. As used in this article, "catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

Sec. 6. As used in this article, "content of an electronic communication" means information concerning the substance or meaning of the communication that:

(1) has been sent or received by a user;

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

(3) is not readily accessible to the public.

Sec. 7. As used in this article, "court" means:

(1) a circuit court;

(2) a superior court;

(3) a probate court; or

(4) a juvenile court.

Sec. 8. As used in this article, "custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.



Sec. 9. As used in this article, "designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

Sec. 10. As used in this article, "digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

Sec. 11. As used in this article, "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Sec. 12. As used in this article, "electronic communication" has the meaning set forth in 18 U.S.C. 2510(12).

Sec. 13. As used in this article, "electronic communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

Sec. 14. As used in this article, "fiduciary" means:

- (1) an attorney in fact;
- (2) a guardian;
- (3) a personal representative; or
- (4) a trustee.

The term includes an additional or successor attorney in fact, guardian, personal representative, or trustee as well as an original attorney in fact, guardian, personal representative, or trustee.

Sec. 15. As used in this article, "guardian" means a person appointed by a court to manage the estate of a living individual. The term includes a limited guardian.

Sec. 16. As used in this article, "information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

Sec. 17. As used in this article, "online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

Sec. 18. As used in this article, "person" means:

- (1) an individual;
- (2) an estate;
- (3) a business or nonprofit entity;
- (4) a public corporation;
- (5) a government or subdivision, agency, or instrumentality of a government; or
- (6) another legal entity.



Sec. 19. As used in this article, "personal representative" means an executor, an administrator, a special administrator, or a person that performs substantially the same function as an executor, administrator, or special administrator under the law of Indiana other than this article.

Sec. 20. As used in this article, "power of attorney" means a record that grants an attorney in fact authority to act in the place of a principal.

Sec. 21. As used in this article, "principal" means an individual who grants authority to an attorney in fact in a power of attorney.

Sec. 22. As used in this article, "protected person" means an individual for whom a guardian has been appointed. The term includes an individual for whom an application for the appointment of a guardian is pending.

Sec. 23. As used in this article, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 24. As used in this article, "remote computing service" means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. 2510(14).

Sec. 25. As used in this article, "terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

Sec. 26. As used in this article, "trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.

Sec. 27. As used in this article, "user" means a person that has an account with a custodian.

Sec. 28. As used in this article, "will" includes a codicil, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.

Chapter 2. Fiduciary's Access to Digital Assets

Sec. 1. (a) A user may use an online tool to direct the custodian that carries, maintains, processes, receives, or stores the user's digital assets:

- (1) to disclose; or
- (2) not to disclose;

some or all of the user's digital assets, including the content of electronic communications to a designated recipient. If the online tool allows the user to modify or delete a direction at all times, a



direction by a user to the custodian regarding disclosure through use of an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(b) If a user has not used an online tool to give a direction under subsection (a) or if the custodian has not provided an online tool, the user, in a will, trust, power of attorney, or other record, may:

- (1) allow; or
- (2) prohibit;

disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(c) A user's:

- (1) direction through the use of an online tool under subsection (a); or
- (2) provision in a will, trust, power of attorney, or other record under subsection (b);

overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

Sec. 2. (a) This article does not change or impair a right of:

- (1) a custodian; or
- (2) a user;

under a terms-of-service agreement to access and use digital assets of the user.

(b) This article does not give a fiduciary or designated recipient any new or expanded rights other than the rights held by the user:

- (1) for whom the fiduciary or designated recipient acts;
- (2) who is represented by the fiduciary or designated recipient; or
- (3) whose estate the fiduciary represents or acts for.

(c) A fiduciary's access to a user's digital assets may be modified or eliminated:

- (1) by the user;
- (2) by federal law; or
- (3) by a terms-of-service agreement;

if the user has not given a direction under section 1(a) of this chapter or allowed or prohibited disclosure through a will, trust, power of attorney, or other record under section 1(b) of this chapter.

Sec. 3. (a) When disclosing digital assets of a user under this chapter, the custodian, at the custodian's sole discretion, may:

- (1) grant a fiduciary or designated recipient full access to the



user's account;

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

(3) provide a fiduciary or designated recipient a copy of a record of any digital asset that, on the date on which the custodian received the request for disclosure, the user could have accessed if the user:

(A) were alive;

(B) had full capacity; and

(C) had access to the account.

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

(c) A custodian need not disclose under this chapter a digital asset that has been deleted by a user.

(d) Subject to subsection (e), if:

(1) a user directs a custodian to disclose to a fiduciary or designated recipient; or

(2) a fiduciary or designated recipient requests disclosure by a custodian of;

some, but not all, of the user's digital assets under this chapter, the custodian need not disclose the digital assets if segregation of the digital assets would impose an undue burden on the custodian.

(e) If a custodian believes that a direction or request for the disclosure of some but not all of a user's digital assets as described in subsection (d) would impose an undue burden on the custodian, the custodian or fiduciary may seek an order from a court for the custodian:

(1) to disclose:

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

(B) all of the user's digital assets; or

(C) none of the user's digital assets;

to the fiduciary or designated recipient; or

(2) to disclose all of the user's digital assets to the court for review in camera.

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



- (1) A written request for disclosure in physical or electronic form.
- (2) A certified or authenticated copy of the death certificate of the user.
- (3) A copy of the letters (as defined in IC 29-1-1-3(a)(17)) of the personal representative or of the order of no supervision or order of unsupervised administration issued to the personal representative under IC 29-1-7.5.
- (4) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications.
- (5) If requested by the custodian:
 - (A) a number, username, address, or other unique subscriber identifier or account identifier assigned by the custodian to identify the user's account;
 - (B) evidence linking the account to the user; or
 - (C) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in clause (A);
 - (ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. 2701 et seq., 47 U.S.C. 222, or other applicable law;
 - (iii) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or
 - (iv) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the user's estate.

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

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified or authenticated copy of the death certificate of the user;
- (3) a copy of the letters (as defined in IC 29-1-1-3(a)(17)) of the personal representative or of the order of no supervision or order of unsupervised administration issued to the



personal representative under IC 29-1-7.5; or

(4) if requested by the custodian:

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

(B) evidence linking the account to the user;

(C) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the user's estate; or

(D) a finding by the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in clause (A); or

(ii) disclosure of the user's digital assets is reasonably necessary for administration of the user's estate.

Sec. 6. To the extent that a power of attorney expressly grants an attorney in fact authority over the content of electronic communications sent or received by the principal, and unless directed otherwise by the principal or a court, a custodian shall disclose to the principal's attorney in fact the content of the electronic communications of the principal if the attorney in fact gives the custodian:

(1) a written request for disclosure of the electronic communications in physical or electronic form;

(2) an original or copy of the power of attorney expressly granting the attorney in fact authority over the content of electronic communications of the principal;

(3) a certification by the attorney in fact, under penalty of perjury, that the power of attorney is in effect; and

(4) if requested by the custodian:

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

(B) evidence linking the account to the principal.

Sec. 7. Unless otherwise ordered by a court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an attorney in fact having specific authority over the principal's digital assets or general authority to act on behalf of the principal a catalogue of electronic communications sent or received by the principal and the digital assets, other than the content of electronic communications, of the principal if the attorney in fact gives the custodian:

(1) a written request for disclosure of the catalogue of



electronic communications and the digital assets in physical or electronic form;

(2) an original or a copy of the power of attorney giving the attorney in fact specific authority over the principal's digital assets or general authority to act on behalf of the principal;

(3) a certification by the attorney in fact, under penalty of perjury, that the power of attorney is in effect; and

(4) if requested by the custodian:

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

(B) evidence linking the account to the principal.

Sec. 8. Unless otherwise ordered by a court or provided in the trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account that is held in trust, including:

(1) a catalogue of electronic communications of the trustee; and

(2) the content of the electronic communications of the trustee.

Sec. 9. Unless otherwise ordered by a court, directed by the user, or provided in the trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original user or a successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(1) a written request for disclosure of the content of the electronic communication in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under IC 30-4-4-5 that includes consent to disclosure to the trustee of the content of electronic communications carried, maintained, processed, received, or stored in the account of the trust;

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

(4) if requested by the custodian:

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

(B) evidence linking the account to the trust.



Sec. 10. Unless otherwise ordered by the court, directed by the user, or provided in the trust, a custodian shall disclose, to a trustee that is not an original user of the account, a catalogue of electronic communications sent or received by an original user or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

- (1) a written request for disclosure of the catalogue of electronic communications and digital assets in physical or electronic form;**
- (2) a certified copy of the trust instrument or a certification of the trust under IC 30-4-4-5;**
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and**
- (4) if requested by the custodian:**
 - (A) a number, username, address, or other unique subscriber identifier or account identifier assigned by the custodian to identify the trust's account; or**
 - (B) evidence linking the account to the trust.**

Sec. 11. (a) After an opportunity for a hearing under IC 29-3, a court may grant a guardian access to the digital assets of the protected person.

(b) Unless otherwise ordered by a court or directed by the user, a custodian shall disclose to a guardian the catalogue of electronic communications sent or received by the protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the guardian gives the custodian:

- (1) a written request for disclosure of the catalogue of electronic communications and the digital assets in physical or electronic form;**
 - (2) a certified copy of the court order giving the guardian authority over the digital assets of the protected person; and**
 - (3) if requested by the custodian:**
 - (A) a number, username, address, or other unique subscriber identifier or account identifier assigned by the custodian to identify the account of the protected person; or**
 - (B) evidence linking the account to the protected person.**
- (c) A guardian with general authority to manage the assets of a**



protected person may, for good cause, request that the custodian of the digital assets of the protected person suspend or terminate an account of the protected person. A request made under this subsection must be accompanied by a certified copy of the court order giving the guardian authority over the protected person's property.

Sec. 12. (a) The legal duties imposed on a fiduciary charged with managing tangible property, including:

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

also apply to a fiduciary charged with managing digital assets.

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

- (1) except as otherwise provided in section 1 of this chapter, is subject to the applicable terms of service;
- (2) is subject to other applicable law, including copyright law;
- (3) is limited by the scope of the fiduciary's duties; and
- (4) may not be used to impersonate the user.

(c) A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset:

- (1) in which the decedent, protected person, principal, or settlor had a right or interest; and
- (2) that is not held by a custodian or subject to a terms-of-service agreement.

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including IC 24-4.8-2, IC 24-5-22, IC 35-43-1-7, IC 35-43-1-8, IC 35-43-2-3, and IC 35-45-13.

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

- (1) has the right to access the property and any digital asset stored in the property; and
- (2) is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including IC 24-4.8-2, IC 24-5-22, IC 35-43-2-3, and IC 35-45-13.

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



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

(1) if the user is deceased, a certified or authenticated copy of the death certificate of the user;

(2) a copy of:

(A) the letters (as defined in IC 29-1-1-3(a)(17)) of the personal representative or of the order of no supervision or order of unsupervised administration issued to the personal representative under IC 29-1-7.5;

(B) the court order;

(C) the power of attorney; or

(D) the trust;

giving the fiduciary authority over the account; and

(3) if requested by the custodian:

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

(B) evidence linking the account to the user; or

(C) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in clause (A).

Sec. 13. (a) Not more than sixty (60) days after receipt of the information required under sections 4 through 11 of this chapter, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient for:

(1) the disclosure of digital assets; or

(2) the termination of an account.

If the custodian fails to comply with the request, the fiduciary or designated recipient may apply to a court for an order directing compliance.

(b) An order directing compliance for which a fiduciary or designated recipient applies under subsection (a) must contain a finding that compliance is not in violation of 18 U.S.C. 2702.

(c) A custodian may notify a user that a request for disclosure of the user's digital assets or to terminate an account of the user has been made under this chapter.

(d) A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account that occurs after the custodian's receipt of the request.



(e) This chapter does not limit a custodian's ability to obtain, or to require a fiduciary or designated recipient requesting the disclosure of digital assets or the termination of an account under this chapter to obtain, a court order that:

- (1) specifies that the account belongs to the protected person or principal;
- (2) specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and
- (3) contains a finding required by law other than this chapter.

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

Sec. 14. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Revised Uniform Fiduciary Access to Digital Assets Act.

Sec. 15. This chapter:

- (1) modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.; but
- (2) does not:
 - (A) modify, limit, or supersede Section 101(c) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001(c); or
 - (B) authorize electronic delivery of any of the notices described in Section 103(b) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7003(b).

SECTION 15. IC 34-30-2-140.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 140.4. IC 32-39-2-13(f) (Concerning an act done or omission made in good faith in compliance with the Revised Uniform Fiduciary Access to Digital Assets Act).**



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 253

