

As Introduced

131st General Assembly

Regular Session

2015-2016

S. B. No. 358

Senator Oelslager

Cosponsors: Senators Hughes, Seitz, Hite, Eklund, Patton, Bacon

A BILL

To amend section 1337.60 and to enact sections 1
1337.571, 2137.01, 2137.02, 2137.03, 2137.04, 2
2137.05, 2137.06, 2137.07, 2137.08, 2137.09, 3
2137.10, 2137.11, 2137.12, 2137.13, 2137.14, 4
2137.15, 2137.16, 2137.17, and 2137.18 of the 5
Revised Code to adopt the Revised Uniform 6
Fiduciary Access to Digital Assets Act. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 1337.60 be amended and sections 8
1337.571, 2137.01, 2137.02, 2137.03, 2137.04, 2137.05, 2137.06, 9
2137.07, 2137.08, 2137.09, 2137.10, 2137.11, 2137.12, 2137.13, 10
2137.14, 2137.15, 2137.16, 2137.17, and 2137.18 of the Revised 11
Code be enacted to read as follows: 12

Sec. 1337.571. Unless the power of attorney otherwise 13
provides, language in a power of attorney granting general 14
authority with respect to digital assets causes the agent to be 15
an authorized user for the purpose of applicable computer fraud 16
and unauthorized computer access laws and authorizes the agent 17
to do all of the following: 18

<u>(A) Have access to any catalogue of electronic</u>	19
<u>communications sent or received by the principal;</u>	20
<u>(B) Have access to any other digital asset in which the</u>	21
<u>principal has a right or interest;</u>	22
<u>(C) Have the right to access any of the principal's</u>	23
<u>tangible personal property capable of receiving, storing,</u>	24
<u>processing, or sending a digital asset;</u>	25
<u>(D) Take any action concerning the asset to the extent of</u>	26
<u>the account holder's authority;</u>	27
<u>(E) Have access to the content of electronic</u>	28
<u>communications sent or received by the principal.</u>	29
Sec. 1337.60. A document substantially in the following	30
form may be used to create a statutory form power of attorney	31
that has the meaning and effect prescribed by sections 1337.21	32
to 1337.64 of the Revised Code.	33
[INSERT NAME OF JURISDICTION]	34
STATUTORY FORM POWER OF ATTORNEY	35
IMPORTANT INFORMATION	36
This power of attorney authorizes another person (your	37
agent) to make decisions concerning your property for you (the	38
principal). Your agent will be able to make decisions and act	39
with respect to your property (including your money) whether or	40
not you are able to act for yourself. The meaning of authority	41
over subjects listed on this form is explained in the Uniform	42
Power of Attorney Act (sections 1337.21 to 1337.64 of the	43
Revised Code).	44
This power of attorney does not authorize the agent to	45

make health-care decisions for you. 46

You should select someone you trust to serve as your 47
agent. Unless you specify otherwise, generally the agent's 48
authority will continue until you die or revoke the power of 49
attorney or the agent resigns or is unable to act for you. 50

Your agent is entitled to reasonable compensation unless 51
you state otherwise in the Special Instructions. 52

This form provides for designation of one agent. If you 53
wish to name more than one agent you may name a coagent in the 54
Special Instructions. Coagents are not required to act together 55
unless you include that requirement in the Special Instructions. 56

If your agent is unable or unwilling to act for you, your 57
power of attorney will end unless you have named a successor 58
agent. You may also name a second successor agent. 59

This power of attorney becomes effective immediately 60
unless you state otherwise in the Special Instructions. 61

ACTIONS REQUIRING EXPRESS AUTHORITY 62

Unless expressly authorized and initialed by me in the 63
Special Instructions, this power of attorney does not grant 64
authority to my agent to do any of the following: 65

(1) Create a trust; 66

(2) Amend, revoke, or terminate an inter vivos trust, even 67
if specific authority to do so is granted to the agent in the 68
trust agreement; 69

(3) Make a gift; 70

(4) Create or change rights of survivorship; 71

(5) Create or change a beneficiary designation; 72

(6) Delegate authority granted under the power of attorney; 73
74

(7) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; 75
76
77

(8) Exercise fiduciary powers that the principal has authority to delegate. 78
79

CAUTION: Granting any of the above eight powers will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. 80
81
82
83

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form. 84
85
86

DESIGNATION OF AGENT 87

I, (Name of Principal) name the following person as my agent: 88
89

Name of Agent: 90

..... 91

Agent's Address: 92

..... 93

Agent's Telephone Number: 94

..... 95

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL) 96

If my agent is unable or unwilling to act for me, I name as my successor agent: 97
98

Name of Successor Agent:	99
.....	100
Successor Agent's Address:	101
.....	102
Successor Agent's Telephone Number:	103
.....	104
If my successor agent is unable or unwilling to act for	105
me, I name as my second successor agent:	106
Name of Second Successor Agent:	107
.....	108
Second Successor Agent's Address:	109
.....	110
Second Successor Agent's Telephone Number:	111
.....	112
GRANT OF GENERAL AUTHORITY	113
I grant my agent and any successor agent general authority	114
to act for me with respect to the following subjects as defined	115
in the Uniform Power of Attorney Act (sections 1337.21 to	116
1337.64 of the Revised Code):	117
(INITIAL each subject you want to include in the agent's	118
general authority. If you wish to grant general authority over	119
all of the subjects you may initial "All Preceding Subjects"	120
instead of initialing each subject.)	121
(...) Real Property	122

(...) Tangible Personal Property	123
(...) Stocks and Bonds	124
(...) Commodities and Options	125
(...) Banks and Other Financial Institutions	126
(...) Operation of Entity or Business	127
(...) Insurance and Annuities	128
(...) Estates, Trusts, and Other Beneficial Interests	129
(...) Claims and Litigation	130
(...) Personal and Family Maintenance	131
(...) Benefits from Governmental Programs or Civil or Military Service	132 133
(...) Retirement Plans	134
(...) Taxes	135
<u>(...) Digital Assets</u>	136
(...) All Preceding Subjects	137
<u>(...) My agent shall have access to the content of</u> <u>electronic communications sent or received by me.</u>	138 139
LIMITATION ON AGENT'S AUTHORITY	140
An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.	141 142 143 144
SPECIAL INSTRUCTIONS (OPTIONAL)	145
You may give special instructions on the following lines:	146

.....	147
.....	148
.....	149
.....	150
.....	151
.....	152
.....	153
.....	154
.....	155
EFFECTIVE DATE	156
This power of attorney is effective immediately unless I	157
have stated otherwise in the Special Instructions.	158
NOMINATION OF GUARDIAN (OPTIONAL)	159
If it becomes necessary for a court to appoint a guardian	160
of my estate or my person, I nominate the following person(s)	161
for appointment:	162
Name of Nominee for guardian of my estate:	163
.....	164
Nominee's Address:	165
.....	166
Nominee's Telephone Number:	167
.....	168
Name of Nominee for guardian of my person:	169

Signature of Notary	194
My commission expires:	195
.....	196
This document prepared by:	197
.....	198
.....	199
IMPORTANT INFORMATION FOR AGENT	200
Agent's Duties	201
When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:	202 203 204 205 206
(1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;	207 208 209
(2) Act in good faith;	210
(3) Do nothing beyond the authority granted in this power of attorney;	211 212
(4) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest;	213 214 215
(5) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:	216 217 218 219

(Principal's Name) by (Your Signature) as Agent	220
Unless the Special Instructions in this power of attorney	221
state otherwise, you must also:	222
(1) Act loyally for the principal's benefit;	223
(2) Avoid conflicts that would impair your ability to act	224
in the principal's best interest;	225
(3) Act with care, competence, and diligence;	226
(4) Keep a record of all receipts, disbursements, and	227
transactions made on behalf of the principal;	228
(5) Cooperate with any person that has authority to make	229
health-care decisions for the principal to do what you know the	230
principal reasonably expects or, if you do not know the	231
principal's expectations, to act in the principal's best	232
interest.	233
Termination of Agent's Authority	234
You must stop acting on behalf of the principal if you	235
learn of any event that terminates this power of attorney or	236
your authority under this power of attorney. Events that	237
terminate a power of attorney or your authority to act under a	238
power of attorney include:	239
(1) The death of the principal;	240
(2) The principal's revocation of the power of attorney or	241
your authority;	242
(3) The occurrence of a termination event stated in the	243
power of attorney;	244
(4) The purpose of the power of attorney is fully	245
accomplished;	246

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

Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the Revised Code). If you violate the Uniform Power of Attorney Act or act outside the authority granted, you may be liable for any damages caused by your violation.

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

Sec. 2137.01. As used in this chapter:

(A) "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.

(B) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated as agent, attorney in fact, or otherwise.

(C) "Carries" means engages in the transmission of an electronic communication.

(D) "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.

(E) "Content of an electronic communication" means

<u>information concerning the substance or meaning of the</u>	275
<u>communication that meets all of the following conditions:</u>	276
<u>(1) It has been sent or received by a user.</u>	277
<u>(2) It is in electronic storage by a custodian providing</u>	278
<u>an electronic-communication service to the public or is carried</u>	279
<u>or maintained by a custodian providing a remote-computing</u>	280
<u>service to the public.</u>	281
<u>(3) It is not readily accessible to the public.</u>	282
<u>(F) "Court" means the probate court for all matters in</u>	283
<u>which the court has exclusive jurisdiction under section 2101.24</u>	284
<u>of the Revised Code. "Court" also includes the probate court or</u>	285
<u>the general division of the court of common pleas for matters in</u>	286
<u>which such courts have concurrent jurisdiction under section</u>	287
<u>2101.24 of the Revised Code.</u>	288
<u>(G) "Custodian" means a person that carries, maintains,</u>	289
<u>processes, receives, or stores a digital asset of a user.</u>	290
<u>(H) "Designated recipient" means a person chosen by a user</u>	291
<u>using an online tool to administer digital assets of the user.</u>	292
<u>(I) "Digital asset" means an electronic record in which an</u>	293
<u>individual has a right or interest. "Digital asset" does not</u>	294
<u>include an underlying asset or liability unless the asset or</u>	295
<u>liability is itself an electronic record.</u>	296
<u>(J) "Electronic" means relating to technology having</u>	297
<u>electrical, digital, magnetic, wireless, optical,</u>	298
<u>electromagnetic, or similar capabilities.</u>	299
<u>(K) "Electronic communication" has the same meaning as in</u>	300
<u>18 U.S.C. 2510(12), as amended.</u>	301

(L) "Electronic-communication service" means a custodian 302
that provides to a user the ability to send or receive an 303
electronic communication. 304

(M) "Fiduciary" means an original, additional, or 305
successor agent, guardian, personal representative, or trustee. 306

(N) (1) "Guardian" means any person, association, or 307
corporation appointed by the probate court to have the care and 308
management of the person, the estate, or the person and the 309
estate of an incompetent or minor. When applicable, "guardian" 310
includes, but is not limited to, a limited guardian, an interim 311
guardian, a standby guardian, and an emergency guardian 312
appointed pursuant to division (B) of section 2111.02 of the 313
Revised Code. "Guardian" also includes both of the following: 314

(a) An agency under contract with the department of 315
developmental disabilities for the provision of protective 316
service under sections 5123.55 to 5123.59 of the Revised Code 317
when appointed by the probate court to have the care and 318
management of the person of an incompetent; 319

(b) A conservator appointed by the probate court in an 320
order of conservatorship issued pursuant to section 2111.021 of 321
the Revised Code. 322

(2) "Guardian" does not include a guardian under sections 323
5905.01 to 5905.19 of the Revised Code. 324

(O) "Information" means data, text, images, videos, 325
sounds, codes, computer programs, software, databases, or the 326
like. 327

(P) "Online tool" means an electronic service provided by 328
a custodian that allows the user, in an agreement distinct from 329
the terms-of-service agreement between the custodian and user, 330

to provide directions for disclosure or nondisclosure of digital 331
assets to a third person. 332

(Q) "Person" means an individual, corporation, business 333
trust, estate, trust, partnership, limited liability company, 334
association, joint venture, government, governmental agency or 335
instrumentality, public corporation, or any other legal or 336
commercial entity. 337

(R) "Personal representative" means an executor, 338
administrator, special administrator, or other person acting 339
under the authority of the probate court to perform 340
substantially the same function under the law of this state. 341
"Personal representative" also includes a commissioner in a 342
release of assets from administration under section 2113.03 of 343
the Revised Code and an applicant for summary release from 344
administration under section 2113.031 of the Revised Code. 345

(S) "Power of attorney" means a writing or other record 346
that grants authority to an agent to act in the place of the 347
principal. 348

(T) "Principal" means an individual who grants authority 349
to an agent in a power of attorney. 350

(U) "Record" means information that is inscribed on a 351
tangible medium or that is stored in an electronic or other 352
medium and is retrievable in perceivable form. 353

(V) "Remote-computing service" means a custodian that 354
provides to a user computer-processing services or the storage 355
of digital assets by means of an electronic communications 356
system, as defined in 18 U.S.C. 2510(14), as amended. 357

(W) "Terms-of-service agreement" means an agreement that 358
controls the relationship between a user and a custodian. 359

(X) "Trustee" means a fiduciary with legal title to 360
property pursuant to an agreement or declaration that creates a 361
beneficial interest in another. "Trustee" includes an original, 362
additional, and successor trustee and a cotrustee. 363

(Y) "User" means a person that has an account with a 364
custodian. 365

(Z) "Ward" means any person for whom a guardian is acting 366
or for whom the probate court is acting pursuant to section 367
2111.50 of the Revised Code. "Ward" includes a person for whom a 368
conservator has been appointed by the probate court in an order 369
of conservatorship issued pursuant to section 2111.021 of the 370
Revised Code. 371

(AA) "Will" includes codicils to wills admitted to 372
probate, lost, spoliated, or destroyed wills, and instruments 373
admitted to probate under section 2107.081 of the Revised Code. 374
"Will" does not include inter vivos trusts or other instruments 375
that have not been admitted to probate. 376

Sec. 2137.02. (A) This chapter applies to all of the 377
following: 378

(1) An agent acting under a power of attorney executed 379
before, on, or after the effective date of this section; 380

(2) A personal representative acting for a decedent who 381
died before, on, or after the effective date of this section; 382

(3) A guardianship proceeding commenced before, on, or 383
after the effective date of this section; 384

(4) A trustee acting under a trust created before, on, or 385
after the effective date of this section; 386

(5) A custodian, if the user resides in this state or 387

resided in this state at the time of the user's death. 388

(B) This chapter does not apply to a digital asset of an 389
employer used by an employee in the ordinary course of the 390
employer's business. 391

Sec. 2137.03. (A) A user may use an online tool to direct 392
the custodian to disclose or not to disclose some or all of the 393
user's digital assets, including the content of electronic 394
communications. If the online tool allows the user to modify or 395
delete a direction at all times, a direction regarding 396
disclosure using an online tool overrides a contrary direction 397
by the user in a will, trust, power of attorney, or other 398
record. 399

(B) If a user has not used an online tool to give 400
direction under division (A) of this section, or if the 401
custodian has not provided an online tool, the user may allow or 402
prohibit in a will, trust, power of attorney, or other record, 403
disclosure to a fiduciary of some or all of the user's digital 404
assets, including the content of electronic communications sent 405
or received by the user. 406

(C) A user's direction under division (A) or (B) of this 407
section overrides a contrary provision in a terms-of-service 408
agreement that does not require the user to act affirmatively 409
and distinctly from the user's assent to the terms of service. 410

Sec. 2137.04. (A) This chapter does not change or impair a 411
right of a custodian or a user under a terms-of-service 412
agreement to access and use digital assets of the user. 413

(B) This chapter does not give a fiduciary any new or 414
expanded rights other than those held by the user for whom, or 415
for whose estate, the fiduciary acts or represents. 416

(C) A fiduciary's access to digital assets may be modified 417
or eliminated by a user, by federal law, or by a terms-of- 418
service agreement if the user has not provided direction under 419
section 2137.03 of the Revised Code. 420

Sec. 2137.05. (A) When disclosing digital assets of a user 421
under this chapter, the custodian may, at its sole discretion, 422
do any of the following: 423

(1) Grant a fiduciary or designated recipient full access 424
to the user's account; 425

(2) Grant a fiduciary or designated recipient partial 426
access to the user's account sufficient to perform the tasks 427
with which the fiduciary or designated recipient is charged; 428

(3) Provide a fiduciary or designated recipient a copy in 429
a record of any digital asset that, on the date the custodian 430
received the request for disclosure, the user could have 431
accessed if the user were alive and had full capacity and access 432
to the account. 433

(B) A custodian may assess a reasonable administrative 434
charge for the cost of disclosing digital assets under this 435
chapter. 436

(C) A custodian is not required to disclose under this 437
chapter a digital asset deleted by a user. 438

(D) If a user directs or a fiduciary requests a custodian 439
to disclose under this chapter some, but not all, of the users 440
digital assets, the custodian is not required to disclose the 441
assets if segregation of the assets would impose an undue burden 442
on the custodian. If the custodian believes the direction or 443
request imposes an undue burden, the custodian or fiduciary may 444
seek an order from the court to disclose any of the following: 445

<u>(1) A subset limited by date of the user's digital assets;</u>	446
<u>(2) All of the user's digital assets to the fiduciary or designated recipient;</u>	447 448
<u>(3) None of the user's digital assets;</u>	449
<u>(4) All of the user's digital assets to the court for review in camera.</u>	450 451
<u>Sec. 2137.06. 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 all of the following:</u>	452 453 454 455 456 457 458
<u>(A) A written request for disclosure in physical or electronic form;</u>	459 460
<u>(B) A copy of the death certificate of the user;</u>	461
<u>(C) A copy of the letter of appointment of the personal representative, the entry appointing a commissioner under division (E) of section 2113.03 of the Revised Code, or the entry granting summary release from administration under division (E) of section 2113.031 of the Revised Code;</u>	462 463 464 465 466
<u>(D) 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;</u>	467 468 469 470
<u>(E) If requested by the custodian, any of the following:</u>	471
<u>(1) A number, username, address, or other unique</u>	472

subscriber or account identifier assigned by the custodian to 473
identify the user's account; 474

(2) Evidence linking the account to the user; 475

(3) A finding by the court that one of the following 476
applies: 477

(a) The user had a specific account with the custodian, 478
identifiable by the information specified in division (E)(1) of 479
this section. 480

(b) Disclosure of the content of electronic communications 481
of the user would not violate 18 U.S.C. 2701 et seq., as 482
amended, 47 U.S.C. 222, as amended, or other applicable law. 483

(c) Unless the user provided direction using an online 484
tool, the user consented to disclosure of the content of 485
electronic communications. 486

(d) Disclosure of the content of electronic communications 487
of the user is reasonably necessary for administration of the 488
estate. 489

Sec. 2137.07. Unless the user prohibited disclosure of 490
digital assets or the court directs otherwise, a custodian shall 491
disclose to the personal representative of the estate of a 492
deceased user a catalogue of electronic communications sent or 493
received by the user and digital assets, other than the content 494
of electronic communications, of the user, if the personal 495
representative gives the custodian all of the following: 496

(A) A written request for disclosure in physical or 497
electronic form; 498

(B) A copy of the death certificate of the user; 499

(C) A copy of the letter of appointment of the personal representative, the entry appointing a commissioner under division (E) of section 2113.03 of the Revised Code, or the entry granting summary release from administration under division (E) of section 2113.031 of the Revised Code; 500
501
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(D) If requested by the custodian, any of the following: 505

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account; 506
507
508

(2) Evidence linking the account to the user; 509

(3) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; 510
511
512

(4) A finding by the court that either of the following applies: 513
514

(a) The user had a specific account with the custodian, identifiable by the information specified in division (D)(1) of this section. 515
516
517

(b) Disclosure of the user's digital assets is reasonably necessary for administration of the estate. 518
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Sec. 2137.08. To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian all of the following: 520
521
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525

(A) A written request for disclosure in physical or electronic form; 526
527

(B) A copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal; 528
529
530

(C) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; 531
532

(D) If requested by the custodian, either of the following: 533
534

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; 535
536
537

(2) Evidence linking the account to the principal. 538

Sec. 2137.09. Unless otherwise ordered by the court, 539
directed by the principal, or provided by a power of attorney, a 540
custodian shall disclose to an agent with specific authority 541
over digital assets or general authority to act on behalf of a 542
principal a catalogue of electronic communications sent or 543
received by the principal and digital assets, other than the 544
content of electronic communications, of the principal, if the 545
agent gives the custodian all of the following: 546

(A) A written request for disclosure in physical or electronic form; 547
548

(B) A copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal; 549
550
551

(C) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; 552
553

(D) If requested by the custodian, either of the following: 554
555

(1) A number, username, address, or other unique 556
subscriber or account identifier assigned by the custodian to 557
identify the principal's account; 558

(2) Evidence linking the account to the principal. 559

Sec. 2137.10. Unless otherwise ordered by the court or 560
provided in a trust, a custodian shall disclose to a trustee 561
that is an original user of an account any digital asset of the 562
account held in trust, including a catalogue of electronic 563
communications of the trustee and the content of electronic 564
communications. 565

Sec. 2137.11. Unless otherwise ordered by the court, 566
directed by the user, or provided in a trust, a custodian shall 567
disclose to a trustee that is not an original user of an account 568
the content of an electronic communication sent or received by 569
an original or successor user and carried, maintained, 570
processed, received, or stored by the custodian in the account 571
of the trust, if the trustee gives the custodian all of the 572
following: 573

(A) A written request for disclosure in physical or 574
electronic form; 575

(B) Either a copy of the trust instrument that includes 576
consent to disclosure of the content of electronic 577
communications to the trustee and a certification by the 578
trustee, under penalty of perjury, that the trust exists and the 579
trustee is a currently acting trustee of the trust or a 580
certification of the trust under section 5810.13 of the Revised 581
Code that includes a statement that the trust authorizes 582
disclosure of the content of electronic communications to the 583
trustee; 584

(C) If requested by the custodian, either of the 585
following: 586

(1) A number, username, address, or other unique 587
subscriber or account identifier assigned by the custodian to 588
identify the trust's account; 589

(2) Evidence linking the account to the trust. 590

Sec. 2137.12. Unless otherwise ordered by the court, 591
directed by the user, or provided in a trust, a custodian shall 592
disclose to a trustee that is not an original user of an account 593
a catalogue of electronic communications sent or received by an 594
original or successor user and stored, carried, or maintained by 595
the custodian in an account of the trust and any digital assets, 596
other than the content of electronic communications, in which 597
the trust has a right or interest, if the trustee gives the 598
custodian all of the following: 599

(A) A written request for disclosure in physical or 600
electronic form; 601

(B) Either a copy of the trust instrument and a 602
certification by the trustee, under penalty of perjury, that the 603
trust exists and the trustee is a currently acting trustee of 604
the trust or a certification of the trust under section 5810.13 605
of the Revised Code; 606

(C) If requested by the custodian, either of the 607
following: 608

(1) A number, username, address, or other unique 609
subscriber or account identifier assigned by the custodian to 610
identify the trust's account; 611

(2) Evidence linking the account to the trust. 612

Sec. 2137.13. (A) After an opportunity for a hearing, the 613
court may grant a guardian access to the digital assets of a 614
ward. 615

(B) Unless otherwise ordered by the court or directed by 616
the user, a custodian shall disclose to a guardian the catalogue 617
of electronic communications sent or received by a ward and any 618
digital assets, other than the content of electronic 619
communications, in which the ward has a right or interest, if 620
the guardian gives the custodian all of the following: 621

(1) A written request for disclosure in physical or 622
electronic form; 623

(2) A copy of the court order that gives the guardian 624
authority over the digital assets of the ward; 625

(3) If requested by the custodian, either of the 626
following: 627

(a) A number, username, address, or other unique 628
subscriber or account identifier assigned by the custodian to 629
identify the account of the ward; 630

(b) Evidence linking the account to the ward. 631

(C) A guardian of the ward may request a custodian of the 632
digital assets of the ward to suspend or terminate an account of 633
the ward for good cause. A request made under this section shall 634
be accompanied by a copy of the court order giving the guardian 635
authority over the ward. 636

Sec. 2137.14. (A) The legal duties imposed on a fiduciary 637
charged with managing tangible property apply to the management 638
of digital assets, including all of the following: 639

(1) The duty of care; 640

<u>(2) The duty of loyalty;</u>	641
<u>(3) The duty of confidentiality.</u>	642
<u>(B) All of the following apply to a fiduciary's authority</u>	643
<u>with respect to a digital asset of a user:</u>	644
<u>(1) Except as otherwise provided in section 2137.03 of the</u>	645
<u>Revised Code, it is subject to the applicable terms of service.</u>	646
<u>(2) It is subject to other applicable laws, including</u>	647
<u>copyright law.</u>	648
<u>(3) It is limited by the scope of the fiduciary's duties.</u>	649
<u>(4) It may not be used to impersonate the user.</u>	650
<u>(C) A fiduciary with authority over the property of a</u>	651
<u>decedent, ward, principal, or settlor has the right to access</u>	652
<u>any digital asset in which the decedent, ward, principal, or</u>	653
<u>settlor had a right or interest and that is not held by a</u>	654
<u>custodian or subject to a terms-of-service agreement.</u>	655
<u>(D) A fiduciary acting within the scope of the fiduciary's</u>	656
<u>duties is an authorized user of the property of the decedent,</u>	657
<u>ward, principal, or settlor for the purpose of applicable</u>	658
<u>computer-fraud and unauthorized-computer-access laws, including</u>	659
<u>section 2913.04 of the Revised Code.</u>	660
<u>(E) Both of the following apply to a fiduciary with</u>	661
<u>authority over the tangible, personal property of a decedent,</u>	662
<u>ward, principal, or settlor:</u>	663
<u>(1) The fiduciary has the right to access the property and</u>	664
<u>any digital asset stored in it.</u>	665
<u>(2) The fiduciary is an authorized user for the purpose of</u>	666
<u>computer-fraud and unauthorized-computer-access laws, including</u>	667

section 2913.04 of the Revised Code. 668

(F) A custodian may disclose information in an account to 669
a fiduciary of the user when the information is required to 670
terminate an account used to access digital assets licensed to 671
the user. 672

(G) A fiduciary of a user may request a custodian to 673
terminate the user's account. A request for termination shall be 674
in writing, in either physical or electronic form, and 675
accompanied by all of the following: 676

(1) If the user is deceased, a copy of the death 677
certificate of the user; 678

(2) A copy of the instrument giving the fiduciary 679
authority over the account, as follows: 680

(a) For a personal representative, a copy of the letter of 681
appointment of the personal representative, the entry appointing 682
a commissioner under division (E) of section 2113.03 of the 683
Revised Code, or the entry granting summary release from 684
administration under division (E) of section 2113.031 of the 685
Revised Code; 686

(b) For an agent, a copy of the power of attorney; 687

(c) For a trustee, either a copy of the trust instrument 688
and a certification by the trustee, under penalty of perjury, 689
that the trust exists and the trustee is a currently acting 690
trustee of the trust or a certification of the trust under 691
section 5810.13 of the Revised Code; or 692

(d) For a guardian, a copy of the court order giving the 693
guardian authority over the ward. 694

(3) If requested by the custodian, any of the following: 695

(a) A number, username, address, or other unique 696
subscriber or account identifier assigned by the custodian to 697
identify the user's account; 698

(b) Evidence linking the account to the user; 699

(c) A finding by the court that the user had a specific 700
account with the custodian, identifiable by the information 701
specified in division (G) (3) (a) of this section. 702

Sec. 2137.15. (A) Not later than sixty days after receipt 703
of the information required under sections 2137.06 to 2137.13 of 704
the Revised Code, a custodian shall comply with a request under 705
this chapter from a fiduciary or designated recipient to 706
disclose digital assets or terminate an account. If the 707
custodian fails to comply, the fiduciary or designated recipient 708
may apply to the court for an order directing compliance. 709

(B) An order under division (A) of this section directing 710
compliance shall contain a finding that compliance is not in 711
violation of 18 U.S.C. 2702, as amended. 712

(C) A custodian may notify the user that a request for 713
disclosure or to terminate an account was made under this 714
chapter. 715

(D) A custodian may deny a request under this chapter from 716
a fiduciary or designated recipient for disclosure of digital 717
assets or to terminate an account if the custodian is aware of 718
any lawful access to the account following the receipt of the 719
fiduciary's request. 720

(E) Nothing in this chapter limits a custodian's ability 721
to obtain, or to require a fiduciary or designated recipient 722
requesting disclosure or termination under this chapter to 723
obtain, a court order that does all of the following: 724

<u>(1) Specifies that an account belongs to the ward or principal;</u>	725 726
<u>(2) Specifies that there is sufficient consent from the ward or principal to support the requested disclosure; and</u>	727 728
<u>(3) Contains a finding required by law other than this chapter.</u>	729 730
<u>(F) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.</u>	731 732 733
<u>Sec. 2137.16. In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.</u>	734 735 736 737
<u>Sec. 2137.17. This chapter modifies, limits, or supersedes the "Electronic Signatures in Global and National Commerce Act," 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).</u>	738 739 740 741 742
<u>Sec. 2137.18. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.</u>	743 744 745 746 747 748
Section 2. That existing section 1337.60 of the Revised Code is hereby repealed.	749 750