

2015 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB(LRBx4226/1))

Received: 2/3/2016 Received By: fknepp
For: Roger Roth (608) 266-0718 Same as LRB: s0256
May Contact: By/Representing: Matt
Subject: Probate - miscellaneous Drafter: fknepp
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Extra Copies:

Submit via email: YES
Requester's email: Sen.Roth@legis.wisconsin.gov
Carbon copy (CC) to: fern.knepp@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Wisconsin Digital Property Act

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	fknepp 2/3/2016	jdye 2/3/2016	_____	sbasford 2/3/2016	sbasford 2/3/2016	

FE Sent For:

<END>

Knepp, Fern

From: Henkel, Matt
Sent: Wednesday, February 03, 2016 10:12 AM
To: Knepp, Fern
Subject: 4226/1

Could we get LRB 4226 jacketed and also get ASA 1 to AB-695 (LRBs0256) so we can stay in line with Assembly actions?

Thanks!

-Matt

Matt Henkel
Chief of Staff
Office of Senator Roger Roth
Room 306 South, State Capitol
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State of Wisconsin
2015 - 2016 LEGISLATURE

In 2-3 out today

Senate

ASSEMBLY SUBSTITUTE AMENDMENT 3,

TO Senate ASSEMBLY BILL 695 (LBX 4226/1)

50299/1
LRBs 0256/1 RML
FFK:jld Campyln
↑
Keep

February 2, 2016 - Offered by Representatives SARGENT and R. BROOKS.

LX

Regen

1 AN ACT to renumber 853.32 (2) (a); to amend 54.01 (10), 54.01 (25), 244.02 (12),
2 244.61 (form), 701.0103 (20), 701.0419 (2), 705.10 (1) (intro.), 766.01 (15),
3 851.27, 853.32 (2) (title) and 943.70 (1) (h); and to create 54.20 (2) (m), 244.41
4 (1) (i), 244.445, 701.0816 (28), chapter 711, 853.18 (1) (d) and 853.32 (2) (a) 2.
5 of the statutes; relating to: creating the Wisconsin Digital Property Act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 54.01 (10) of the statutes is amended to read:

7 54.01 (10) "Guardian" means a person appointed by a court under s. 54.10 to
8 manage the income and assets, which may include, by court order, digital property,
9 as defined in s. 711.03 (10), and provide for the essential requirements for health and
10 safety and the personal needs of a minor, an individual found incompetent, or a
11 spendthrift.

1 **SECTION 2.** 54.01 (25) of the statutes is amended to read:

2 54.01 (25) “Property” means any interest, legal or equitable, in real or personal
3 property, without distinction as to kind, including money, rights of a beneficiary
4 under a contractual arrangement, digital property, as defined in s. 711.03 (10), choses
5 in action, and anything else that may be the subject of ownership.

6 **SECTION 3.** 54.20 (2) (m) of the statutes is created to read:

7 54.20 (2) (m) Access the ward’s digital property in accordance with s. 711.08.

8 **SECTION 4.** 244.02 (12) of the statutes is amended to read:

9 244.02 (12) “Property” means anything that may be the subject of ownership,
10 including real or personal property, digital property, as defined in s. 711.03 (10), or
11 any interest or right in that property.

12 **SECTION 5.** 244.41 (1) (i) of the statutes is created to read:

13 244.41 (1) (i) Access the content of an electronic communication, as defined in
14 s. 711.03 (6), sent or received by the principal.

15 **SECTION 6.** 244.445 of the statutes is created to read:

16 **244.445 Digital property.** Unless the power of attorney otherwise provides,
17 language in a power of attorney granting general authority with respect to digital
18 property authorizes the agent, subject to s. 711.06 (1), to do all of the following:

19 (1) Find, access, manage, protect, distribute, dispose of, transfer, transfer
20 ownership rights in, or otherwise control digital devices, and any digital property
21 stored thereon, with digital devices to include desktops, laptops, tablets, peripherals,
22 storage devices, mobile telephones, smartphones, and any similar digital device,
23 either currently in existence or that may exist as technology develops.

24 (2) Access, manage, distribute, delete, terminate, transfer, transfer ownership
25 rights in, or otherwise control my digital accounts, other than the content of

1 electronic communications, as defined in s. 711.03 (6), with digital accounts to
2 include my bank or other financial institution accounts, electronic mail accounts,
3 blogs, software licenses, social network accounts, social media accounts, file-sharing
4 and storage accounts, financial management accounts, domain registration
5 accounts, domain name service accounts, Web hosting accounts, tax preparation
6 service accounts, online store accounts, and affiliated programs currently in
7 existence or that may exist as technology develops.

8 (3) Access, manage, distribute, delete, transfer, transfer ownership rights in,
9 or otherwise control any digital property the principal may own or otherwise possess
10 rights to, other than the content of electronic communications, as defined in s. 711.03
11 (6), regardless of the ownership of the digital device on which the digital property is
12 stored or the ownership of the digital account within which the digital property is
13 stored.

14 **SECTION 7.** 244.61 (form) of the statutes is amended to read:

15 **244.61** (form)

16 **WISCONSIN STATUTORY FORM**

17 **POWER OF ATTORNEY**

18 **FOR FINANCES AND PROPERTY**

19 **IMPORTANT INFORMATION**

20 **THIS POWER OF ATTORNEY AUTHORIZES ANOTHER PERSON (YOUR**
21 **AGENT) TO MAKE DECISIONS CONCERNING YOUR PROPERTY FOR YOU**
22 **(THE PRINCIPAL). YOUR AGENT WILL BE ABLE TO MAKE DECISIONS AND**
23 **ACT WITH RESPECT TO YOUR PROPERTY (INCLUDING YOUR MONEY)**
24 **WHETHER OR NOT YOU ARE ABLE TO ACT FOR YOURSELF. THE MEANING**
25 **OF AUTHORITY OVER SUBJECTS LISTED ON THIS FORM IS EXPLAINED IN**

1 THE UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY ACT
2 IN CHAPTER 244 OF THE WISCONSIN STATUTES.

3 THIS POWER OF ATTORNEY DOES NOT AUTHORIZE THE AGENT TO
4 MAKE HEALTH-CARE DECISIONS FOR YOU.

5 YOU SHOULD SELECT SOMEONE YOU TRUST TO SERVE AS YOUR
6 AGENT. UNLESS YOU SPECIFY OTHERWISE, GENERALLY THE AGENT'S
7 AUTHORITY WILL CONTINUE UNTIL YOU DIE OR REVOKE THE POWER OF
8 ATTORNEY OR THE AGENT RESIGNS OR IS UNABLE TO ACT FOR YOU.

9 YOUR AGENT IS ENTITLED TO REASONABLE COMPENSATION
10 UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS.

11 THIS FORM PROVIDES FOR DESIGNATION OF ONE AGENT. IF YOU
12 WISH TO NAME MORE THAN ONE AGENT YOU MAY NAME A COAGENT IN
13 THE SPECIAL INSTRUCTIONS. COAGENTS ARE NOT REQUIRED TO ACT
14 TOGETHER UNLESS YOU INCLUDE THAT REQUIREMENT IN THE SPECIAL
15 INSTRUCTIONS.

16 IF YOUR AGENT IS UNABLE OR UNWILLING TO ACT FOR YOU, YOUR
17 POWER OF ATTORNEY WILL END UNLESS YOU HAVE NAMED A
18 SUCCESSOR AGENT. YOU MAY ALSO NAME A 2ND SUCCESSOR AGENT.

19 THIS POWER OF ATTORNEY BECOMES EFFECTIVE IMMEDIATELY
20 UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS. THIS
21 POWER OF ATTORNEY DOES NOT REVOKE ANY POWER OF ATTORNEY
22 EXECUTED PREVIOUSLY UNLESS YOU SO PROVIDE IN THE SPECIAL
23 INSTRUCTIONS.

24 IF YOU REVOKE THIS POWER OF ATTORNEY, YOU SHOULD NOTIFY
25 YOUR AGENT AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A

1 COPY. IF YOUR AGENT IS YOUR SPOUSE OR DOMESTIC PARTNER AND
2 YOUR MARRIAGE IS ANNULLED OR YOU ARE DIVORCED OR LEGALLY
3 SEPARATED OR THE DOMESTIC PARTNERSHIP IS TERMINATED AFTER
4 SIGNING THIS DOCUMENT, THE DOCUMENT IS INVALID.

5 IF YOU HAVE QUESTIONS ABOUT THE POWER OF ATTORNEY OR THE
6 AUTHORITY YOU ARE GRANTING TO YOUR AGENT, YOU SHOULD SEEK
7 LEGAL ADVICE BEFORE SIGNING THIS FORM.

8 DESIGNATION OF AGENT

9 I (name of principal) name the following person as my agent:

10 Name of agent:

11 Agent's address:

12 Agent's telephone number:

13 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

15 Name of successor agent:

16 Successor agent's address:

17 Successor agent's telephone number:

18 If my successor agent is unable or unwilling to act for me, I name as my 2nd
19 successor agent:

20 Name of 2nd successor agent:

21 Second successor agent's address:

22 Second successor agent's telephone number:

23 GRANT OF GENERAL AUTHORITY

1 I grant my agent and any successor agent general authority to act for me with
2 respect to the following subjects as defined in the Uniform Power of Attorney for
3 Finances and Property Act in chapter 244 of the Wisconsin statutes:

4 INITIAL each subject you want to include in the agent’s general authority.

5 Real property

6 Tangible personal property

7 Digital property

8 Stocks and bonds

9 Commodities and options

10 Banks and other financial institutions

11 Operation of entity or business

12 Insurance and annuities

13 Estates, trusts, and other beneficial interests

14 Claims and litigation

15 Personal and family maintenance

16 Benefits from governmental programs or civil or military service

17 Retirement plans

18 Taxes

19 LIMITATION ON AGENT’S AUTHORITY

20 An agent who is not my spouse or domestic partner MAY NOT use my property
21 to benefit the agent or a person to whom the agent owes an obligation of support
22 unless I have included that authority in the special instructions.

23 SPECIAL INSTRUCTIONS (OPTIONAL)

24 You may give special instructions in the following space

25 EFFECTIVE DATE

1 (Seal, if any)
 2 Signature of notary
 3 My commission expires:
 4 This document prepared by:

5 IMPORTANT INFORMATION FOR AGENT

6 AGENT’S DUTIES

7 WHEN YOU ACCEPT THE AUTHORITY GRANTED UNDER THIS POWER
 8 OF ATTORNEY, A SPECIAL LEGAL RELATIONSHIP IS CREATED BETWEEN
 9 YOU AND THE PRINCIPAL. THIS RELATIONSHIP IMPOSES UPON YOU
 10 LEGAL DUTIES THAT CONTINUE UNTIL YOU RESIGN OR THE POWER OF
 11 ATTORNEY IS TERMINATED OR REVOKED. YOU MUST DO ALL OF THE
 12 FOLLOWING:

13 (1) DO WHAT YOU KNOW THE PRINCIPAL REASONABLY EXPECTS YOU
 14 TO DO WITH THE PRINCIPAL’S PROPERTY OR, IF YOU DO NOT KNOW THE
 15 PRINCIPAL’S EXPECTATIONS, ACT IN THE PRINCIPAL’S BEST INTEREST.

16 (2) ACT IN GOOD FAITH.

17 (3) DO NOTHING BEYOND THE AUTHORITY GRANTED IN THIS POWER
 18 OF ATTORNEY.

19 (4) DISCLOSE YOUR IDENTITY AS AN AGENT WHENEVER YOU ACT
 20 FOR THE PRINCIPAL BY WRITING OR PRINTING THE NAME OF THE
 21 PRINCIPAL AND SIGNING YOUR OWN NAME AS “AGENT” IN THE
 22 FOLLOWING MANNER:

23 (principal’s name) by (your signature) as agent

24 UNLESS THE SPECIAL INSTRUCTIONS IN THIS POWER OF ATTORNEY
 25 STATE OTHERWISE, YOU MUST ALSO DO ALL OF THE FOLLOWING:

1 (1) ACT LOYALLY FOR THE PRINCIPAL'S BENEFIT.

2 (2) AVOID CONFLICTS THAT WOULD IMPAIR YOUR ABILITY TO ACT IN
3 THE PRINCIPAL'S BEST INTEREST.

4 (3) ACT WITH CARE, COMPETENCE, AND DILIGENCE.

5 (4) KEEP A RECORD OF ALL RECEIPTS, DISBURSEMENTS, AND
6 TRANSACTIONS MADE ON BEHALF OF THE PRINCIPAL.

7 (5) COOPERATE WITH ANY PERSON THAT HAS AUTHORITY TO MAKE
8 HEALTH-CARE DECISIONS FOR THE PRINCIPAL TO DO WHAT YOU KNOW
9 THE PRINCIPAL REASONABLY EXPECTS OR, IF YOU DO NOT KNOW THE
10 PRINCIPAL'S EXPECTATIONS, TO ACT IN THE PRINCIPAL'S BEST INTEREST.

11 (6) ATTEMPT TO PRESERVE THE PRINCIPAL'S ESTATE PLAN IF YOU
12 KNOW THE PLAN AND PRESERVING THE PLAN IS CONSISTENT WITH THE
13 PRINCIPAL'S BEST INTEREST.

14 TERMINATION OF AGENT'S AUTHORITY

15 YOU MUST STOP ACTING ON BEHALF OF THE PRINCIPAL IF YOU
16 LEARN OF ANY EVENT THAT TERMINATES THIS POWER OF ATTORNEY OR
17 YOUR AUTHORITY UNDER THIS POWER OF ATTORNEY. EVENTS THAT
18 TERMINATE A POWER OF ATTORNEY OR YOUR AUTHORITY TO ACT UNDER
19 A POWER OF ATTORNEY INCLUDE ALL OF THE FOLLOWING:

20 (1) DEATH OF THE PRINCIPAL.

21 (2) THE PRINCIPAL'S REVOCATION OF THE POWER OF ATTORNEY OR
22 YOUR AUTHORITY.

23 (3) THE OCCURRENCE OF A TERMINATION EVENT STATED IN THE
24 POWER OF ATTORNEY.

1 (4) THE PURPOSE OF THE POWER OF ATTORNEY IS FULLY
2 ACCOMPLISHED.

3 (5) IF YOU ARE MARRIED TO THE PRINCIPAL, A LEGAL ACTION IS
4 FILED WITH A COURT TO END YOUR MARRIAGE, OR FOR YOUR LEGAL
5 SEPARATION, UNLESS THE SPECIAL INSTRUCTIONS IN THIS POWER OF
6 ATTORNEY STATE THAT SUCH AN ACTION WILL NOT TERMINATE YOUR
7 AUTHORITY.

8 (6) IF YOU ARE THE PRINCIPAL'S DOMESTIC PARTNER AND YOUR
9 DOMESTIC PARTNERSHIP IS TERMINATED, UNLESS THE SPECIAL
10 INSTRUCTIONS IN THIS POWER OF ATTORNEY STATE THAT SUCH AN
11 ACTION WILL NOT TERMINATE YOUR AUTHORITY.

12 LIABILITY OF AGENT

13 THE MEANING OF THE AUTHORITY GRANTED TO YOU IS DEFINED IN
14 THE UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY ACT
15 IN CHAPTER 244 OF THE WISCONSIN STATUTES. IF YOU VIOLATE THE
16 UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY ACT IN
17 CHAPTER 244 OF THE WISCONSIN STATUTES OR ACT OUTSIDE THE
18 AUTHORITY GRANTED, YOU MAY BE LIABLE FOR ANY DAMAGES CAUSED
19 BY YOUR VIOLATION.

20 IF THERE IS ANYTHING ABOUT THIS DOCUMENT OR YOUR DUTIES
21 THAT YOU DO NOT UNDERSTAND, YOU SHOULD SEEK LEGAL ADVICE.

22 OPTIONAL SIGNATURE OF AGENT

23 I HAVE READ AND ACCEPT THE DUTIES AND LIABILITIES OF THE
24 AGENT AS SPECIFIED IN THIS POWER OF ATTORNEY.

25 Agent's signature

Date

1 (APPENDIX FOLLOWS)

2 SECTION 8. 701.0103 (20) of the statutes is amended to read:

3 701.0103 (20) “Property” means anything that may be the subject of
4 ownership, whether real or personal ~~or~~, legal or equitable, or digital property, as
5 defined in s. 711.03 (10), or any interest therein.

6 SECTION 9. 701.0419 (2) of the statutes is amended to read:

7 701.0419 (2) GOVERNING TERMS. Property transferred or appointed by a will or
8 by a beneficiary designation under an employee benefit plan, life insurance policy,
9 or online tool, as defined in s. 711.03 (18), or other instrument permitting designation
10 of a beneficiary to a trust, shall be administered in accordance with the terms of the
11 trust as the terms of the trust may have been modified prior to the testator’s or
12 designator’s death, even though the will, beneficiary designation, online tool, or
13 other instrument was not reexecuted or republished after exercise of the power to
14 modify, unless the will, beneficiary designation, online tool, or other instrument
15 expressly provides otherwise.

16 SECTION 10. 701.0816 (28) of the statutes is created to read:

17 701.0816 (28) Obtain digital property, as provided under s. 711.07.

18 SECTION 11. 705.10 (1) (intro.) of the statutes is amended to read:

19 705.10 (1) (intro.) A provision for a nonprobate transfer on death in an
20 insurance policy, contract of employment, bond, mortgage, promissory note,
21 certificated or uncertificated security, account agreement, custodial agreement,
22 deposit agreement, compensation plan, pension plan, individual retirement plan,
23 employee benefit plan, trust, conveyance, online tool, as defined in s. 711.03 (18),
24 deed of gift, marital property agreement, or other written instrument of a similar
25 nature is nontestamentary. This subsection governs a written provision that:

1 (b) The information is electronically stored by a custodian that provides an
2 electronic communication service to the public or is carried or maintained by a
3 custodian that provides a remote computing service to the public.

4 (c) The information is not readily accessible to the public.

5 (7) “Court” means the circuit court having jurisdiction over a matter related
6 to this chapter.

7 (8) “Custodian” means a person that carries, maintains, processes, receives, or
8 stores a user’s digital property.

9 (9) “Designated recipient” means a person chosen by the user using an online
10 tool to administer the user’s digital property.

11 (10) “Digital property” means an electronic record in which a person has a right
12 or interest. “Digital property” does not include underlying property or an underlying
13 liability unless the property or liability is itself an electronic record.

14 (11) “Electronic” means relating to technology having electrical, digital,
15 magnetic, wireless, optical, electromagnetic, or similar capabilities.

16 (12) “Electronic communication” has the meaning given in 18 USC 2510 (12).

17 (13) “Electronic communication service” means a custodian that provides to a
18 user the ability to send or receive an electronic communication.

19 (14) “Fiduciary” means an original, additional, or successor personal
20 representative, conservator, guardian, agent, or trustee.

21 (15) “Governing instrument” has the meaning given in s. 854.01 (2).

22 (16) “Guardian” means a person appointed under s. 54.10.

23 (17) “Information” means data, text, images, videos, sounds, codes, computer
24 programs, software, databases, or the like.

1 **(18)** “Online tool” means a setting provided by a custodian that allows the user,
2 by an agreement between the custodian and user that is distinct from the user’s
3 assent to the terms of service, to provide directions for disclosure or nondisclosure
4 of digital property to a designated recipient.

5 **(19)** “Person” means an individual, estate, business or nonprofit entity, public
6 corporation, government or governmental subdivision, agency, or instrumentality, or
7 other legal entity.

8 **(20)** “Personal representative” has the meaning given in s. 851.23, but also
9 includes a special administrator and any person who, under the laws of this state
10 other than this chapter, performs functions substantially similar to a personal
11 representative, as defined in s. 851.23.

12 **(21)** “Power of attorney” means an instrument that grants an agent authority
13 to act in the place of a principal.

14 **(22)** “Principal” means an individual who grants authority to an agent in a
15 power of attorney.

16 **(23)** “Protected person” means all of the following:

- 17 1. An individual for whom a guardian is appointed.
- 18 2. An individual for whom a conservator is appointed.

19 **(24)** “Record” means information that is inscribed on a tangible medium or that
20 is stored in an electronic or other medium and is retrievable in perceivable form.

21 **(25)** “Remote computing service” means a custodian that provides to a user
22 computer processing services or the storage of digital property by means of an
23 electronic communications system, as defined in 18 USC 2510 (14).

24 **(26)** “Terms of service agreement” means an agreement that controls the
25 relationship between a user and a custodian.

1 (27) “Trustee” means a person with legal title to an asset under an agreement
2 or declaration that creates a beneficial interest in another. “Trustee” includes an
3 original, additional, and successor trustee, and a cotrustee.

4 (28) “User” means a person that has an account with a custodian.

5 (29) “Will” includes a codicil and any document incorporated by reference in a
6 testamentary document under s. 853.32 (1) or (2).

7 **711.04 Priorities; user directions for disclosure of digital property. (1)**

8 A user may use an online tool to direct the custodian to disclose to a designated
9 recipient or not to disclose some or all of the user’s digital property, including the
10 content of electronic communications. If the online tool allows the user to modify or
11 delete a direction at all times, a direction regarding disclosure using an online tool
12 overrides a contrary direction by the user in a will, trust, power of attorney, or any
13 other governing instrument.

14 (2) If a user has not used an online tool to give direction under sub. (1), or if the
15 custodian has not provided an online tool, the user may allow or prohibit disclosure
16 to a fiduciary of some or all of the user’s digital property, including the content of
17 electronic communications sent or received by the user, in a will, trust, power of
18 attorney, or any other governing instrument.

19 (3) A user’s direction under sub. (1) or (2) overrides a contrary provision in a
20 terms of service agreement that does not require the user to act affirmatively and
21 distinctly from the user’s assent to the terms of service.

22 **711.05 Disclosure of digital property; personal representative of a**
23 **deceased user. (1)** DIGITAL PROPERTY OTHER THAN CONTENT OF ELECTRONIC
24 COMMUNICATIONS. Unless a user prohibited disclosure of digital property or the court
25 directs otherwise, a custodian shall disclose to the personal representative of the

1 deceased user's estate a catalogue of electronic communications sent or received by
2 the deceased user and digital property, other than the content of electronic
3 communications sent or received by the deceased user, in which the deceased user's
4 estate has a right or interest, if the personal representative gives the custodian all
5 of the following:

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

7 (b) A certified copy of the death certificate of the user.

8 (c) One of the following to establish the personal representative's authority over
9 the deceased user's digital property:

10 1. A certified copy of the letters of appointment of the personal representative
11 or special administrator.

12 2. A summary proceeding or other court order.

13 3. A transfer by affidavit.

14 (d) If requested by the custodian, any of the following:

15 1. A number, username, address, or other unique subscriber or account
16 identifier assigned by the custodian to identify the user's account.

17 2. Evidence linking the account to the user.

18 3. An affidavit stating that disclosure of the user's digital property is
19 reasonably necessary for administration of the estate.

20 4. A court order that includes any of the following findings:

21 a. The user had a specific account with the custodian, identifiable by the
22 information specified in subd. 1.

23 b. The disclosure of the user's digital property is reasonably necessary for
24 administration of the estate.

1 (2) DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS; DECEASED USER. If
2 a deceased user consented or a court directs disclosure of the contents of electronic
3 communications of a deceased user, the custodian shall disclose to the personal
4 representative of the deceased user's estate the content of an electronic
5 communication sent or received by the user, in which the deceased user's estate has
6 a right or interest, if the personal representative gives the custodian all of the
7 following:

8 (a) The items described in sub. (1) (a) to (c).

9 (b) Unless the user provided direction using an online tool, a copy of the user's
10 will, certification of trust under s. 701.1013, or other governing instrument,
11 evidencing the deceased user's consent to disclosure of the content of electronic
12 communications.

13 (c) If requested by the custodian, any of the following:

14 1. A number, username, address, or other unique subscriber or account
15 identifier assigned by the custodian to identify the user's account.

16 2. Evidence linking the account to the user.

17 3. A court order that includes any of the following findings:

18 a. The user had a specific account with the custodian that is identifiable by the
19 information specified in subd. 1.

20 b. The disclosure of the content of electronic communications of the user does
21 not violate 18 USC 2701 et seq., 47 USC 222, or other applicable law.

22 c. Unless the user provided direction using an online tool, the user consented
23 to disclosure of the content of electronic communications.

24 d. The disclosure of the content of electronic communications of the user is
25 reasonably necessary for administration of the estate.

1 **711.06 Disclosure of digital property; agent under a power of attorney.**

2 **(1) DISCLOSURE OF DIGITAL PROPERTY OTHER THAN CONTENT OF ELECTRONIC**
3 COMMUNICATIONS; PRINCIPAL. Unless otherwise ordered by the court, directed by the
4 principal, or provided in a power of attorney, a custodian shall disclose to an agent
5 with specific authority over the principal’s digital property or general authority to
6 act on behalf of a principal a catalogue of electronic communications sent or received
7 by the principal and digital property, other than the content of electronic
8 communications, in which the principal has a right or interest, if the agent gives the
9 custodian all of the following:

10 (a) A written request for disclosure in physical or electronic form.

11 (b) An original or a copy of the power of attorney that gives the agent specific
12 authority over digital property or general authority to act on behalf of the principal.

13 (c) A certification by the agent, under penalty of perjury, that the power of
14 attorney is in effect.

15 (d) If requested by the custodian, any of the following:

16 1. A number, username, address, or other unique subscriber or account
17 identifier assigned by the custodian to identify the principal’s account.

18 2. Evidence linking the account to the principal.

19 **(2) DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS; PRINCIPAL.** To the
20 extent a power of attorney expressly grants an agent authority over the content of
21 electronic communications sent or received by the principal and unless directed
22 otherwise by the principal or the court, a custodian shall disclose to the agent the
23 content of electronic communications if the agent gives the custodian all of the
24 following:

25 (a) The items described in sub. (1) (a), (c), and (d).

1 (b) An original or a copy of the power of attorney that expressly grants the agent
2 authority over the content of electronic communications of the principal.

3 **711.07 Disclosure of digital property held in trust. (1) DISCLOSURE OF**
4 **DIGITAL PROPERTY HELD IN TRUST; TRUSTEE IS ORIGINAL USER.** Unless otherwise ordered
5 by the court or provided in a trust, a custodian shall disclose to a trustee who is an
6 original user of an account any digital property of the account that is held in trust,
7 including a catalogue of electronic communications of the trustee and the content of
8 electronic communications.

9 **(2) DISCLOSURE OF DIGITAL PROPERTY OTHER THAN CONTENT OF ELECTRONIC**
10 **COMMUNICATIONS; TRUSTEE IS NOT ORIGINAL USER.** Unless otherwise ordered by the
11 court, directed by the user, or provided in a trust, a custodian shall disclose, to a
12 trustee that is not an original user of an account, a catalogue of electronic
13 communications sent or received by an original or successor user and stored, carried,
14 or maintained by the custodian in an account of the trust and any digital property,
15 other than the content of electronic communications, in which the trust has a right
16 or interest, if the trustee gives the custodian all of the following:

17 (a) A written request for disclosure in physical or electronic form.

18 (b) A certification of the trust under s. 701.1013.

19 (c) A certification by the trustee, under penalty of perjury, that the trust exists
20 and the trustee is a currently acting trustee of the trust.

21 (d) If requested by the custodian, any of the following:

22 1. A number, username, address, or other unique subscriber or account
23 identifier assigned by the custodian to identify the trust's account.

24 2. Evidence linking the account to the trust.

1 **(3) DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD IN TRUST;**
2 TRUSTEE IS NOT ORIGINAL USER. Unless otherwise ordered by the court, directed by the
3 user, or provided in a trust, a custodian shall disclose to a trustee that is not an
4 original user of an account the content of an electronic communication sent or
5 received by an original or successor user and carried, maintained, processed,
6 received, or stored by the custodian in the trust's account, in which the trust has a
7 right or interest, if the trustee gives the custodian all of the following:

8 (a) The items described in sub. (2) (a), (c), and (d).

9 (b) A certification of the trust under s. 701.1013 that includes an original or
10 successor user's consent to disclosure of the content of electronic communications to
11 the trustee.

12 **711.08 Disclosure of digital property; conservator or guardian of**
13 **protected person.** (1) After an opportunity for a hearing under s. 54.10, the court
14 may grant a guardian access to the digital property of a protected person.

15 (2) After an opportunity for a hearing under s. 54.76, the court may grant a
16 conservator access to the digital property of a protected person.

17 (3) Unless otherwise ordered by the court or directed by the user, a custodian
18 shall disclose to a guardian or custodian the catalogue of electronic communications
19 sent or received by a protected person and any digital property, other than the
20 content of electronic communications, in which the protected person has a right or
21 interest if the guardian or conservator gives the custodian all of the following:

22 (a) A written request for disclosure in physical or electronic form.

23 (b) A certified copy of the court order that gives the guardian or conservator
24 authority over the protected person's digital property.

25 (c) If requested by the custodian, any of the following:

1 1. A number, username, address, or other unique subscriber or account
2 identifier assigned by the custodian to identify the account of the protected person.

3 2. Evidence linking the account to the protected person.

4 (4) A guardian or conservator with general authority to manage a protected
5 person's assets may request a custodian of the protected person's digital property to
6 suspend or terminate an account of the protected person for good cause. A request
7 made under this subsection shall be accompanied by a certified copy of the court
8 order granting the guardian or conservator general authority to manage the
9 protected person's assets.

10 **711.09 Choice of methods for disclosing digital property; custodian. (1)**

11 When disclosing digital property of a user under this chapter, the custodian may in
12 its sole discretion provide a fiduciary or designated recipient with any of the
13 following:

14 (a) Full access to the user's account.

15 (b) Partial access to the user's account that is sufficient to perform the tasks
16 with which the fiduciary or designated recipient is charged.

17 (c) A copy in a record of any digital property that the user could have accessed
18 if the user were alive, had full capacity, and had full access to the account on the date
19 on which the custodian received the request for disclosure.

20 (2) A custodian may assess a reasonable administrative charge to a fiduciary
21 or designated recipient for the cost of disclosing digital property under this chapter.

22 (3) A custodian is not required to disclose under this chapter digital property
23 deleted by the user.

24 (4) If a user directs or a fiduciary or designated recipient requests a custodian
25 to disclose under this chapter some, but not all, of the user's digital property, the

1 custodian is not required to disclose the digital property if segregation of the digital
2 property would impose an undue burden on the custodian. If the custodian refuses
3 to disclose digital property because the custodian believes the segregation of the
4 digital property imposes an undue burden, the custodian or fiduciary may seek an
5 order from the court to disclose any of the following:

6 (a) To the fiduciary or designated recipient, a subset of the user’s digital
7 property that is limited by date.

8 (b) To the fiduciary or designated recipient, all of the user’s digital property.

9 (c) None of the user’s digital property.

10 (d) To the court for review in camera, all of the user’s digital property.

11 **711.10 Custodian compliance and immunity.** (1) Not later than 60 days
12 after receipt of the information required under ss. 711.05 to 711.08 or 711.12 (7) or
13 an online tool, a custodian shall comply with a request under this chapter from a
14 fiduciary or designated recipient to disclose digital property or terminate an account.
15 If the custodian fails to comply, the fiduciary or designated recipient may apply to the
16 court for an order directing the custodian to comply with the request.

17 (2) A court shall include in an order directing a custodian to comply with a
18 request made under this chapter a finding that compliance with the request does not
19 violate 18 USC 2702.

20 (3) A custodian may notify the user that a request for disclosure of digital
21 property or to terminate an account was made under this chapter.

22 (4) A custodian may deny a request under this chapter from a fiduciary or
23 designated recipient for disclosure of digital property or to terminate an account if
24 the custodian is aware of any lawful access to the account after the receipt of the
25 fiduciary’s request.

1 (5) This chapter does not limit a custodian’s ability to obtain or to require a
2 fiduciary or designated recipient requesting disclosure or termination under this
3 chapter to obtain a court order that does all of the following:

4 (a) Specifies that an account belongs to the protected person or principal.

5 (b) Specifies that there is sufficient consent from the protected person or
6 principal to support the requested disclosure.

7 (c) Contains any findings required by law other than this chapter.

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

10 **711.11 Terms of service agreement.** (1) This chapter does not change or
11 impair the rights of a custodian or a user under a terms of service agreement to access
12 and use digital property of the user.

13 (2) This chapter does not give a fiduciary or designated recipient rights other
14 than the rights held by the user for whom, or for whose estate, the fiduciary or
15 designated recipient acts or represents.

16 (3) A fiduciary’s or designated recipient’s access to digital property may be
17 modified or eliminated by any of the following:

18 (a) The user.

19 (b) Federal law.

20 (c) A terms of service agreement if the user has not provided direction under
21 s. 711.04.

22 **711.12 Fiduciary duty and authority.** (1) The legal duties imposed on a
23 fiduciary with the authority to manage tangible property apply to a fiduciary’s
24 management of digital property.

1 (2) (a) A fiduciary’s or designated recipient’s authority with respect to a user’s
2 digital property may not be used to impersonate the user and is subject to all of the
3 following:

- 4 1. Except as otherwise provided in s. 711.04, the applicable terms of service.
- 5 2. Other applicable law, including copyright law.

6 (b) A fiduciary’s authority is limited by the scope of the fiduciary’s duties.

7 (3) A fiduciary with authority over the property of a decedent, protected person,
8 principal, or settlor has the right to access any digital property in which the decedent,
9 protected person, principal, or settlor had a right or interest and that is not held by
10 a custodian or subject to a terms of service agreement.

11 (4) A fiduciary acting within the scope of the fiduciary’s duties is an authorized
12 user of the digital property of the decedent, protected person, principal, or settlor for
13 the purpose of applicable computer fraud and unauthorized computer access laws,
14 including s. 943.70.

15 (5) (a) A fiduciary with authority over the tangible personal property of a
16 decedent, protected person, principal, or settlor has the right to access the tangible
17 personal property and any digital property stored in the tangible personal property.

18 (b) A fiduciary with authority over the tangible personal property of a decedent,
19 protected person, principal, or settlor is an authorized user of digital property stored
20 in the tangible personal property for the purpose of computer fraud and
21 unauthorized computer access laws, including s. 943.70.

22 (6) A custodian may disclose information in a user’s account to a fiduciary of
23 the user when the information is required to terminate an account used to access
24 digital property licensed to the user.

1 (7) A fiduciary of a user may request a custodian to terminate the user's
2 account. A request for termination must be in writing, in either physical or electronic
3 form, and accompanied by all of the following:

4 (a) If the user is deceased, a certified copy of the death certificate of the user.

5 (b) Any of the following that grants the fiduciary authority over the user's
6 account:

7 1. A certified copy of the letters of appointment of a personal representative.

8 2. A certified copy of the letters of special administration.

9 3. A certified copy of a summary proceeding or other court order.

10 4. A transfer by affidavit.

11 5. An original or copy of a power of attorney and a certification by the agent that
12 the power of attorney is in effect.

13 6. A certification of the trust under s. 701.1013.

14 (c) If requested by the custodian, any of the following:

15 1. A number, username, address, or other unique subscriber or account
16 identifier assigned by the custodian to identify the user's account.

17 2. Evidence linking the account to the user.

18 3. A finding by the court that the user had a specific account with the custodian,
19 identifiable by the information specified in subd. 1.

20 (8) (a) A fiduciary has no duty to review any digital property of a decedent,
21 settlor, principal, or protected person or to secure or preserve any digital property
22 that is not in the possession of the fiduciary, unless any of the following applies:

23 1. The fiduciary has knowledge, or has reason to believe, that the decedent's
24 estate, settlor's trust, principal, or protected person has digital property of economic
25 value.

1 2. The fiduciary receives a written request from a beneficiary who has an
2 interest in the digital property of the decedent's estate, settlor's trust, principal, or
3 protected person.

4 (b) A fiduciary's reasonable efforts to review, secure, or preserve digital
5 property satisfy a duty to review, secure, or preserve digital property under par. (a).

6 (c) If a fiduciary reviews, secures, or preserves a portion of the digital property
7 of a decedent, settlor, principal, or protected person and the fiduciary does not have
8 a duty to do so, the reviewing, securing, or preserving of a portion of digital property
9 does not give rise to a duty to review, secure, or preserve the remaining portion of the
10 digital property of the decedent, settlor, principal, or protected person.

11 (d) Unless a fiduciary has a duty to review, secure, or preserve digital property
12 under par. (a), a fiduciary is not liable for failing to review, secure, or preserve any
13 digital property of a decedent, settlor, principal, or protected person.

14 **711.13 Marital property classification of digital property.** Chapter 766
15 governs the classification of digital property of a user who is married.

16 **711.14 Uniformity of application and construction.** This chapter shall be
17 applied and construed to effectuate its general purpose to make uniform the law with
18 respect to the subject of this chapter among states enacting it.

19 **711.15 Relation to Electronic Signatures in Global and National**
20 **Commerce Act.** This chapter modifies, limits, or supersedes the Electronic
21 Signatures in Global and National Commerce Act, 15 USC 7001 et seq., but does not
22 modify, limit, or supersede section 101 (c) of that act, 15 USC 7001 (c), or authorize
23 electronic delivery of any of the notices described in section 103 (b) of that act, 15 USC
24 7003 (b).

25 **711.16 Applicability.** (1) This chapter applies to all of the following:

1 (a) A fiduciary acting under a will or power of attorney executed before, on, or
2 after the effective date of this paragraph [LRB inserts date].

3 (b) A personal representative acting for a decedent who died before, on, or after
4 the effective date of this paragraph [LRB inserts date].

5 (c) A guardianship or conservatorship proceeding, whether pending in a court
6 or commenced before, on, or after the effective date of this paragraph [LRB inserts
7 date].

8 (d) A trustee acting under a trust created before, on, or after the effective date
9 of this paragraph [LRB inserts date].

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

12 (3) This chapter does not apply to digital property of an employer used by an
13 employee in the ordinary course of the employer's business.

14 **SECTION 13.** 766.01 (15) of the statutes is amended to read:

15 766.01 (15) "Property" means an interest, present or future, legal or equitable,
16 vested or contingent, in real or personal property, including digital property, as
17 defined in s. 711.03 (10).

18 **SECTION 14.** 851.27 of the statutes is amended to read:

19 **851.27 Property.** "Property" means any interest, legal or equitable, in real or
20 personal property, without distinction as to kind, including money, rights of a
21 beneficiary under a contractual arrangement, choses in action, digital property, as
22 defined in s. 711.03 (10), and anything else that may be the subject of ownership.

23 **SECTION 15.** 853.18 (1) (d) of the statutes is created to read:

24 853.18 (1) (d) Directions provided in an online tool, as defined in s. 711.03 (18).

25 **SECTION 16.** 853.32 (2) (title) of the statutes is amended to read:

