

# HOUSE BILL NO. 379

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE PLOCHER.

1098H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 472, RSMo, by adding thereto nineteen new sections relating to fiduciary access to digital assets.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 472, RSMo, is amended by adding thereto nineteen new sections, to  
2 be known as sections 472.400, 472.405, 472.410, 472.415, 472.420, 472.425, 472.430, 472.435,  
3 472.440, 472.445, 472.450, 472.455, 472.460, 472.465, 472.470, 472.475, 472.480, 472.485, and  
4 472.490, to read as follows:

**472.400. Sections 472.400 to 472.490 shall be known and may be cited as the**  
2 **"Missouri Fiduciary Access to Digital Assets Act".**

**472.405. As used in section 472.400 to 472.490, the following terms mean:**

2 **(1) "Access", includes view, marshal, manage, copy, distribute, or delete;**

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

6 **(3) "Agent", an attorney-in-fact granted authority under a durable or nondurable**  
7 **power of attorney;**

8 **(4) "Carries", engages in the transmission of electronic communications;**

9 **(5) "Catalogue of electronic communications", information that identifies each**  
10 **person with which a user has had an electronic communication, the time and date of the**  
11 **communication, and the electronic address of the person;**

12 **(6) "Conservator", a person appointed by a court to have the care and custody of**  
13 **the estate of a minor or a disabled person. A "limited conservator" is one whose duties or**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 powers are limited. The term "conservator", as used in sections 472.400 to 472.490,  
15 includes limited conservator unless otherwise specified or apparent from the context;

16 (7) "Content of an electronic communication", information concerning the  
17 substance or meaning of the communication which:

18 (a) Has been sent or received by a user;

19 (b) Is in electronic storage by a custodian providing an electronic communication  
20 service to the public or is carried or maintained by a custodian providing a remote  
21 computing service to the public; and

22 (c) Is not readily accessible to the public;

23 (8) "Court", any court with competent jurisdiction within this state;

24 (9) "Custodian", a person that carries, maintains, processes, receives, or stores a  
25 digital asset of a user;

26 (10) "Designated recipient", a person chosen by a user using an online tool to  
27 administer digital assets of the user;

28 (11) "Digital asset", an electronic record in which an individual has a right or  
29 interest. The term does not include an underlying asset or liability unless the asset or  
30 liability is itself an electronic record;

31 (12) "Electronic", relating to technology having electrical, digital, magnetic,  
32 wireless, optical, electromagnetic, or similar capabilities;

33 (13) "Electronic communication", has the same meaning as set forth in 18 U.S.C.  
34 Section 2510(12), as amended;

35 (14) "Electronic communication service", a custodian that provides to a user the  
36 ability to send or receive an electronic communication;

37 (15) "Fiduciary", an original, additional, or successor personal representative,  
38 conservator, agency, or trustee;

39 (16) "Information", data, text, images, videos, sound codes, computer programs,  
40 software, databases, or the like;

41 (17) "Online tool", an electronic service provided by a custodian that allows the  
42 user, in an agreement distinct from the terms-of-service agreement between the custodian  
43 and user, to provide directions for disclosure or nondisclosure of digital assets to a third  
44 person;

45 (18) "Person", an individual, estate, trust, business or nonprofit entity, public  
46 corporation, government or governmental subdivision, agency, instrumentality, or other  
47 legal entity;

48 (19) "Personal representative", executor or administrator, including an  
49 administrator with the will annexed, an administrator de bonis non, an administrator

50 pending contest, an administrator during minority or absence, and any other type of  
51 administrator of the estate of a decedent whose appointment is permitted, or any person  
52 who performs substantially the same function under the law of Missouri, including without  
53 limitation an affiant who has filed a small estate affidavit under section 473.097. It does  
54 not include an executor de son tort;

55 (20) "Power of attorney", a record that grants an agent authority to act in the place  
56 of a principal;

57 (21) "Principal", an individual who grants authority to an agent in a power of  
58 attorney;

59 (22) "Protected person", an individual for whom a conservator has been appointed,  
60 including a protectee, a disabled person, and an individual for whom an application for the  
61 appointment of a conservator is pending;

62 (23) "Record", information that is inscribed on a tangible medium or that is stored  
63 in an electronic or other medium and is retrievable in perceivable form;

64 (24) "Remote computing service", a custodian that provides to a user computer  
65 processing services or the storage of digital assets by means of an electronic  
66 communications system, as defined in 18 U.S.C. Section 2510(14), as amended;

67 (25) "Terms-of-service agreement", an agreement that controls the relationship  
68 between a user and a custodian;

69 (26) "Trustee", a fiduciary with legal title to property under an agreement or  
70 declaration that creates a beneficial interest in another, including an original, additional,  
71 and successor trustee, and a co-trustee;

72 (27) "User", a person that has an account with a custodian;

73 (28) "Will", includes a testamentary instrument, a codicil, a testamentary  
74 instrument that only appoints an executor, and instrument that revokes or revises a  
75 testamentary instrument.

472.410. 1. Sections 472.400 to 472.490 shall apply to:

2 (1) A fiduciary or agent acting under a will or power of attorney executed before,  
3 on, or after the effective date of sections 472.400 to 472.490;

4 (2) A personal representative acting for a decedent who dies before, on, or after the  
5 effective date of sections 472.400 to 472.490;

6 (3) A conservatorship proceeding commenced before, on, or after the effective date  
7 of sections 472.400 to 472.490; and

8 (4) A trustee acting under a trust created before, on, or after the effective date of  
9 sections 472.400 to 472.490.

10           **2. Sections 472.400 to 472.490 shall apply to a custodian if the user resides in this**  
11 **state or resided in this state at the time of the user's death.**

12           **3. Sections 472.400 to 472.490 shall not apply to a digital asset of an employer used**  
13 **by an employee in the ordinary course of the employer's business.**

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

6           **2. If a user has not used an online tool to give direction under subsection 1 of this**  
7 **section or if the custodian has not provided an online tool, the user may allow or prohibit**  
8 **in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all**  
9 **of the user's digital assets, including the content of electronic communications sent or**  
10 **received by the user.**

11           **3. A user's direction under subsection 1 or 2 of this section overrides a contrary**  
12 **provision in a terms-of-service agreement that does not require the user to act affirmatively**  
13 **and distinctly from the user's assent to the terms-of-service.**

**472.420. 1. Sections 472.400 to 472.490 shall not change or impair a right of a**  
2 **custodian or a user under a terms-of-service agreement to access and use digital assets of**  
3 **the user.**

4           **2. Sections 472.400 to 472.490 shall not give a fiduciary any new or expanded rights**  
5 **other than those held by the user for whom, or for whose estate, the fiduciary acts or**  
6 **represents.**

7           **3. A fiduciary's access to digital assets may be modified or eliminated by a user, by**  
8 **federal law, or by a terms-of-service agreement if the user has not provided direction under**  
9 **section 472.415.**

**472.425. 1. When disclosing digital assets of a user under sections 472.400 to**  
2 **472.490, the custodian may at its sole discretion:**

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

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

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

10           **2. A custodian may assess a reasonable administrative charge for the cost of**  
11 **disclosing digital assets under sections 472.400 to 472.490.**

12           **3. A custodian shall not disclose under sections 472.400 to 472.490 a digital asset**  
13 **deleted by a user.**

14           **4. If a user directs or a fiduciary requests a custodian to disclose under sections**  
15 **472.400 to 472.490 some, but not all, of the user's digital assets, the custodian need not**  
16 **disclose the assets if segregation of the assets would impose an undue burden on the**  
17 **custodian. If the custodian believes the direction or request imposes an undue burden, the**  
18 **custodian or fiduciary may seek an order from the court to disclose:**

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

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

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

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

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

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

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

7           **(3) A certified copy of the letters testamentary or letters of administration of the**  
8 **representative or a certified copy of the certificate of clerk in connection with a small estate**  
9 **affidavit or court order;**

10           **(4) Unless the user provided direction using an online tool, then in the case of user**  
11 **consent to disclosure, a copy of the user's will, trust, power of attorney, or other record**  
12 **evidencing the user's consent to disclosure of the content of electronic communications;**  
13 **and**

14           **(5) If requested by the custodian for the purpose of identifying the correct account**  
15 **of the user:**

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

18           **(b) Evidence linking the account to the user; or**

19           **(c) A finding by the court that:**

20           **a. The user had a specific account with the custodian, identifiable by the**  
21 **information specified in paragraph (a) of this subdivision;**

22           **b. Disclosure of the content of electronic communications of the user would not**  
23 **violate 18 U.S.C. Section 2701 et seq., as amended, 47 U.S.C. Section 222, as amended, or**  
24 **other applicable law;**

25           **c. Unless the user provided direction using an online tool, the user consented to**  
26 **disclosure of the content of electronic communications; or**

27           **d. Disclosure of the content of electronic communications of the user is reasonably**  
28 **necessary for administration of the estate.**

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

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

7           **(2) A certified copy of the death certificate of the user;**

8           **(3) A certified copy of the letters testamentary or letters of administration of the**  
9 **representative or a certified copy of certificate of clerk in connection with a small estate**  
10 **affidavit or court order; and**

11           **(4) If requested by the custodian for the purpose of identifying the correct account**  
12 **of the correct user:**

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

15           **(b) Evidence linking the account to the user;**

16           **(c) An affidavit stating that disclosure of the user's digital assets is reasonably**  
17 **necessary for administration of the estate; or**

18           **(d) A finding by the court that:**

19           **a. The user had a specific account with the custodian, identifiable by the**  
20 **information specified in paragraph (a) of this subdivision; or**

21           **b. Disclosure of the user's digital assets is reasonably necessary for administration**  
22 **of the estate.**

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

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

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

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

10           (4) If requested by the custodian for the purpose of identifying the correct account  
11 of the correct user:

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

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

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

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

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

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

12           (4) If requested by the custodian for the purpose of identifying the correct account  
13 of the correct user:

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

16           (b) Evidence linking the account to the principal.

          472.450. Unless otherwise ordered by the court or provided in a trust, a custodian  
2 shall disclose to a trustee that is an original user of an account any digital asset of the  
3 account held in trust, including a catalogue of electronic communications of the trustee and  
4 the content of the electronic communications.

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

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

7           (2) A certified copy of the trust instrument or a certification of the trust under  
8 section 456.10-1013 that includes consent to disclosure of the content of electronic  
9 communications to the trustee;

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

12           (4) If requested by the custodian for the purpose of identifying the correct account  
13 of the correct user:

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

16           (b) Evidence linking the account to the trust.

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

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

8           (2) A certified copy of the trust instrument or a certification of the trust under  
9 section 456.10-1013;

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

12           (4) If requested by the custodian for the purpose of identifying the correct account  
13 of the correct user:

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

16           (b) Evidence linking the account to the trust.

**472.465. 1.** After an opportunity for a hearing under Missouri conservatorship law,  
2 the court may grant a conservator access to the digital assets of a protected person.

3           **2.** Unless otherwise ordered by the court or directed by the user, a custodian shall  
4 disclose to a conservator the catalogue of electronic communications sent or received by  
5 a protected person and any digital assets, other than the content of electronic  
6 communications, in which the protected person has a right or interest if the conservator  
7 gives the custodian:

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

9           (2) A certified copy of the court order that gives the conservator authority over the  
10 digital assets of the protected person; and

11           (3) If requested by the custodian for the purpose of identifying the correct account  
12 of the correct user:

13           (a) A number, username, address, or other unique subscriber or account identifier  
14 assigned by the custodian to identify the account of the protected person; or

15           (b) Evidence linking the account to the protected person.

16           3. A conservator with general authority to manage the assets of a protected person  
17 may request a custodian of the digital assets of the protected person to suspend or  
18 terminate an account of the protected person for good cause. A request made under this  
19 subsection shall be accompanied by a certified copy of the court order giving the  
20 conservator authority over the protected person's property.

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

3           (1) The duty of care;

4           (2) The duty of loyalty; and

5           (3) The duty of confidentiality.

6           2. A fiduciary's or designated recipient's authority with respect to a digital asset  
7 of a user:

8           (1) Except as otherwise provided in section 472.415, is subject to the applicable  
9 terms-of-service agreement;

10           (2) Is subject to other applicable law, including copyright law;

11           (3) Is limited by the scope of the fiduciary's duties; and

12           (4) May not be used to impersonate the user.

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

17           4. A fiduciary acting within the scope of the fiduciary's duties is an authorized user  
18 of the property of the decedent, protected person, principal, or settlor for the purpose of  
19 applicable computer-fraud and unauthorized-computer-access laws, including Missouri  
20 law on unauthorized computer access.

21           5. A fiduciary with authority over the tangible, personal property of a decedent,  
22 protected person, principal, or settlor:

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

24           (2) Is an authorized user for the purpose of computer-fraud and unauthorized-  
25 computer-access laws, including Missouri law on unauthorized computer access.

26           6. A custodian may disclose information in an account to a fiduciary of the user if  
27 the information is required to terminate an account used to access digital assets licensed  
28 to the user.

29           **7. A fiduciary of a user may request a custodian to terminate the user's account.**  
30 **A request for termination shall be in writing, in either physical or electronic form, and**  
31 **accompanied by:**

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

33           **(2) A certified copy of the letter of testamentary or letters of administration of the**  
34 **representative or a certified copy of the certificate of clerk in connection with a small estate**  
35 **affidavit or court order, power of attorney, or trust giving the fiduciary authority over the**  
36 **account; and**

37           **(3) If requested by the custodian for the purpose of identifying the correct account**  
38 **of the correct user:**

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

41           **(b) Evidence linking the account to the user; or**

42           **(c) A finding by the court that the user had a specific account with the custodian,**  
43 **identifiable by the information specified in paragraph (a) of this subdivision.**

**472.475. 1. Not later than sixty days after receipt of the information required**  
2 **under sections 472.430 to 472.470, a custodian shall comply with a request under sections**  
3 **472.400 to 472.490 from a fiduciary or designated recipient to disclose digital assets or**  
4 **terminate an account. If the custodian fails to comply, the fiduciary or designated recipient**  
5 **may apply to the court for an order directing compliance.**

6           **2. An order under subsection 1 of this section directing compliance shall contain**  
7 **a finding that compliance is not in violation of 18 U.S.C. Section 2702, as amended.**

8           **3. A custodian may notify the user that a request for disclosure or to terminate an**  
9 **account was made under sections 472.400 to 472.490.**

10           **4. A custodian may deny a request under sections 472.400 to 472.490 from a**  
11 **fiduciary or designated recipient for disclosure of digital assets or to terminate an account**  
12 **if the custodian is aware of any lawful access to the account following the receipt of the**  
13 **fiduciary's request.**

14           **5. Sections 472.400 to 472.490 do not limit a custodian's ability to obtain or require**  
15 **a fiduciary or designated recipient requesting disclosure or termination under such**  
16 **sections to obtain a court order which:**

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

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

20           **(3) Contains a finding required by law other than as provided under sections**  
21 **472.400 to 472.490.**

22           **6. A custodian and its officers, employees, and agents are immune from liability for**  
23 **an act or omission done in good faith in compliance with sections 472.400 to 472.490.**

**472.480. In applying and construing sections 472.400 to 472.490, consideration may**  
2 **be given to the need to promote uniformity of the law with respect to its subject matter**  
3 **among states that enact similar provisions.**

**472.485. Sections 472.400 to 472.490 modify, limit, or supersede the Electronic**  
2 **Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but do**  
3 **not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or**  
4 **authorize electronic delivery of any of the notices described in Section 103(b) of that act,**  
5 **15 U.S.C. Section 7003(b).**

**472.490. If any provision of sections 472.400 to 472.490 or the application of such**  
2 **sections to any person or circumstance is held invalid, the invalidity does not affect other**  
3 **provisions or application of sections 472.400 to 472.490 which can be given effect without**  
4 **the invalid provision or application, and to this end the provisions of sections 472.400 to**  
5 **472.490 are severable.**

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