

SENATE No. 1110

The Commonwealth of Massachusetts

PRESENTED BY:

Barry R. Finegold

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act clarifying the rights of fiduciaries to access digital assets.

PETITION OF:

NAME:

Barry R. Finegold

DISTRICT/ADDRESS:

Second Essex and Middlesex

SENATE No. 1110

By Mr. Finegold, a petition (accompanied by bill, Senate, No. 1110) of Barry R. Finegold for legislation relative to uniform fiduciary access to digital assets. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 974 OF 2023-2024.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

An Act clarifying the rights of fiduciaries to access digital assets.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 201F the
2 following chapter:-

3 CHAPTER 201G. Massachusetts Fiduciary Access to Digital Assets Act

4 Section 1. Definitions

5 As used in this chapter, the following words shall have the following meanings, unless
6 the context clearly requires otherwise:

7 “Account”, an arrangement under a terms-of-service agreement in which a custodian
8 carries, maintains, processes, receives or stores a digital asset of the user or provides goods or
9 services to the user.

10 “Agent”, an attorney-in-fact granted authority under a durable or nondurable power of
11 attorney.

12 “Carries”, engages in the transmission of an electronic communication.

13 “Catalogue of electronic communications”, information that identifies each person with
14 which a user has had an electronic communication, the time and date of the communication and
15 the electronic address of such person.

16 “Conservator”, a person appointed by a court to manage the estate of a protected person,
17 including, but not limited to, a limited conservator, temporary conservator, special conservator
18 and those individuals specifically authorized under section 5-408 of article V of chapter 190B.

19 “Content of an electronic communication”, information concerning the substance or
20 meaning of the communication which:

21 (i) has been sent or received by a user;

22 (ii) is in electronic storage by a custodian providing an electronic-communication service
23 to the public or is carried or maintained by a custodian providing a remote-computing service to
24 the public; and

25 (iii) is not readily accessible to the public.

26 “Court”, the probate and family court department of the trial court.

27 “Custodian”, a person who carries, maintains, processes, receives or stores a digital asset
28 of a user.

29 “Designated recipient”, a person chosen by a user using an online tool to administer
30 digital assets of the user.

31 “Digital asset”, an electronic record in which an individual has a right or interest;
32 provided, however, that “digital asset” shall not include an underlying asset or liability unless the
33 asset or liability is itself an electronic record.

34 “Electronic”, relating to technology having electrical, digital, magnetic, wireless, optical,
35 electromagnetic or similar capabilities.

36 “Electronic communication”, as set forth in 18 U.S.C. section 2510(12), as amended.

37 “Electronic-communication service”, a custodian that provides to a user the ability to
38 send or receive an electronic communication.

39 “Fiduciary”, an original, additional or successor personal representative, conservator,
40 agent or trustee.

41 “Information”, data, text, images, videos, sounds, codes, computer programs, software,
42 databases or the like.

43 “Higher education institution”, a public or private institution of higher education,
44 including, but not limited to, a college, community college, junior college, graduate school or
45 university.

46 “Higher education institutional account”, an account of which the custodian is: (i) a
47 higher education institution; or (ii) a custodian acting on behalf of a higher education institution.

48 “Online tool”, an electronic service provided by a custodian that allows the user, in an
49 agreement distinct from the terms-of-service agreement between the custodian and user, to
50 provide directions for disclosure or nondisclosure of digital assets to a third person.

51 “Person”, an individual, estate, business or nonprofit entity, public corporation,
52 government or governmental subdivision, agency or instrumentality or other legal entity.

53 “Personal representative”, an executor, administrator, special administrator or person who
54 performs substantially the same function under any general or special law other than this chapter.

55 “Power of attorney”, a record that grants an agent authority to act in the place of a
56 principal.

57 “Principal”, an individual who grants authority to an agent in a power of attorney.

58 “Protected person”, an individual for whom a conservator has been appointed; provided,
59 however, that “protected person” shall include an individual for whom a petition for the
60 appointment of a conservator is pending.

61 “Record”, information that is inscribed on a tangible medium or that is stored in an
62 electronic or other medium and is retrievable in perceivable form.

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

66 “Terms-of-service agreement”, an agreement that controls the relationship between a user
67 and a custodian.

68 “Trustee”, a fiduciary with legal title to property under an agreement or declaration that
69 creates a beneficial interest in another; provided, however, that "trustee" shall include an
70 original, additional or successor trustee, whether or not appointed or confirmed by the court.

71 “User”, a person who has an account with a custodian.

72 “Will” shall include, but not be limited to, a codicil, testamentary instrument that only
73 appoints a personal representative or an instrument that revokes or revises a testamentary
74 instrument.

75 Section 2. Scope and Applicability

76 (a) This chapter shall apply to:

77 (i) a fiduciary acting under a will or power of attorney executed before, on or after the
78 effective date of this chapter;

79 (ii) a personal representative acting for a decedent who died before, on or after the
80 effective date of this chapter;

81 (iii) a conservatorship proceeding commenced before, on or after the effective date of this
82 chapter; or

83 (iv) a trustee acting under a trust created before, on or after the effective date of this
84 chapter.

85 (b) This chapter shall apply to a custodian if the user resides in the commonwealth or
86 resided in the commonwealth at the time of the user’s death.

87 (c) This chapter shall not apply to a digital asset of an employer used by an employee in
88 the ordinary course of the employer's business; provided, however, that for the purposes of this
89 chapter, an individual enrolled at a higher education institution shall not be considered an
90 employee of the higher education institution with regard to any electronic communications or
91 digital assets produced in the ordinary course of the individual's course of study.

92 Section 3. User Direction for Disclosure of Digital Assets

93 (a) A user may use an online tool to direct the custodian to disclose or not to disclose
94 some or all of the user's digital assets, including the content of electronic communications. If the
95 online tool allows the user to modify or delete a direction at all times, a direction regarding
96 disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of
97 attorney or other record.

98 (b) If a user has not used an online tool to give direction under subsection (a) or if the
99 custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of
100 attorney or other record disclosure to a fiduciary of some or all of the user's digital assets,
101 including the content of electronic communications sent or received by the user.

102 (c) A user's direction under subsection (a) or (b) overrides a contrary provision in a
103 terms-of-service agreement that does not require the user to act affirmatively and distinctly from
104 the user's assent to the terms of service.

105 Section 4. Terms-of-Service Agreement

106 (a) This chapter shall not be construed to change or impair a right of a custodian or a user
107 under a terms-of-service agreement to access and use the digital assets of the user.

108 (b) This chapter shall not be construed to give a fiduciary any new or expanded rights
109 other than those held by the user for whom, or for whose estate, the fiduciary acts or represents.

110 (c) A fiduciary's access to digital assets may be modified or eliminated by a user by
111 federal law or by a terms-of-service agreement if the user has not provided direction pursuant to
112 section 3.

113 (d) Notwithstanding anything in this section to the contrary, if a user's account is a higher
114 education institutional account, a user's assent to a terms-of-service agreement shall not be
115 construed to constitute the user's direction to prohibit the disclosure of the user's digital assets to
116 a fiduciary upon or after the user's death.

117 Section 5. Procedure for Disclosing Digital Assets

118 (a) When disclosing the digital assets of a user under this chapter, the custodian may, at
119 their sole discretion:

120 (i) grant a fiduciary or designated recipient full access to the user's account;

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

123 (iii) provide a fiduciary or designated recipient a copy in a record of any digital asset that,
124 on the date the custodian received the request for disclosure, the user could have accessed if the
125 user were alive and had full capacity and access to the account.

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

128 (c) A custodian shall not be required to disclose under this chapter a digital asset deleted
129 by a user.

130 (d) If a user directs or a fiduciary requests a custodian to disclose under this chapter
131 some, but not all, of the user's digital assets, the custodian shall not be required to disclose the
132 assets if segregation of the assets would impose an undue burden on the custodian. If the
133 custodian believes the direction or request imposes an undue burden, the custodian or fiduciary
134 may seek an order from the court to disclose:

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

136 (ii) all of the user's digital assets to the fiduciary or designated recipient;

137 (iii) none of the user's digital assets; or

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

139 Section 6. Disclosure of Electronic Communications of Deceased User

140 (a) If a deceased user consented or a court directs disclosure of the contents of electronic
141 communications of the user, the custodian shall disclose to the personal representative of the
142 estate of the user the content of an electronic communication sent or received by the user if the
143 representative provides to the custodian:

144 (i) a written request for disclosure in physical or electronic form;

145 (ii) a certified copy of the death certificate of the user;

146 (iii) an attested copy of the letter of appointment of the representative or a small-estate
147 affidavit or court order;

148 (iv) unless the deceased user provided direction using an online tool, a copy of the user's
149 will, trust or other record evidencing the user's consent to disclosure of the content of electronic
150 communications; and

151 (v) if requested by the custodian:

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

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

155 (C) a finding by the court that:

156 (I) the user had a specific account with the custodian, identifiable by the information
157 specified in subclause (A);

158 (II) disclosure of the content of electronic communications of the user would not violate
159 18 U.S.C. section 2701 et seq., as amended, 47 U.S.C. section 222, as amended, or other
160 applicable law;

161 (III) unless the user provided direction using an online tool, the user consented to
162 disclosure of the content of electronic communications; or

163 (IV) disclosure of the content of electronic communications of the user is reasonably
164 necessary for administration of the estate.

165 (b) Notwithstanding anything in this section to the contrary, unless the deceased user
166 prohibited disclosure of digital assets or a court directs otherwise, the custodian shall disclose to

167 the personal representative of the estate of the user the content of an electronic communication
168 sent or received by the user if:

169 (i) the user's account was a higher education institutional account;

170 (ii) the user was 25 years of age or younger at the time of their death; and

171 (iii) the representative gives to the custodian each of the records required pursuant to
172 clauses (i) through (iii) or requested pursuant to clause (v) of subsection (a); provided, however,
173 that the representative shall not be required to provide a record of the user's consent to disclosure
174 if such record does not exist.

175 (c) Unless the deceased user prohibited disclosure of digital assets or a court directs
176 otherwise, a custodian shall disclose to the personal representative of the estate of a deceased
177 user a catalogue of electronic communications sent or received by the user and digital assets,
178 other than the content of electronic communications, of the user; provided, however, that the
179 representative shall give to the custodian:

180 (i) each of the records required pursuant to clauses (i) through (iii) of subsection (a); and

181 (ii) if requested by the custodian:

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

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

185 (C) a finding by the court that the user had a specific account with the custodian,
186 identifiable by the information specified in subclause (A); or

187 (D) an affidavit or a finding by the court stating that disclosure of the user's digital assets
188 is reasonably necessary for administration of the estate.

189 Section 7. Disclosure of Digital Assets of Principal

190 (a) Unless otherwise ordered by the court, directed by the principal or provided by a
191 power of attorney, a custodian shall disclose to an agent with specific authority over digital
192 assets or general authority to act on behalf of a principal a catalogue of electronic
193 communications sent or received by the principal and digital assets, other than the content of
194 electronic communications, of the principal if the agent provides to the custodian:

195 (i) a written request for disclosure in physical or electronic form;

196 (ii) an original or a copy of the power of attorney that gives the agent specific authority
197 over digital assets or general authority to act on behalf of the principal;

198 (iii) a certification by the agent, under penalty of perjury, that the power of attorney is in
199 effect; and

200 (iv) if requested by the custodian:

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

203 (B) evidence linking the account to the principal.

204 (b) To the extent a power of attorney expressly grants an agent authority over the content
205 of electronic communications sent or received by the principal and unless directed otherwise by

206 the principal or the court, a custodian shall disclose to the agent the content if the agent gives to
207 the custodian:

208 (i) each of the records required pursuant to clauses (i) and (iii) or requested pursuant to
209 clause (iv) of subsection (a); and

210 (ii) an original or a copy of the power of attorney expressly granting the agent authority
211 over the content of electronic communications of the principal.

212 Section 8. Disclosure of Digital Assets Held in Trust

213 (a) Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose
214 to a trustee that is an original user of an account any digital asset of the account held in trust,
215 including a catalogue of electronic communications of the trustee and the content of electronic
216 communications.

217 (b) Unless otherwise ordered by the court, directed by the user or provided in a trust, a
218 custodian shall disclose to a trustee that is not an original user of an account the content of an
219 electronic communication sent or received by an original or successor user and carried,
220 maintained, processed, received or stored by the custodian in the account of the trust if the
221 trustee provides to the custodian:

222 (i) a written request for disclosure in physical or electronic form;

223 (ii) a certified copy of the trust instrument or a certification of the trust under chapter
224 203E; provided, however, that such copy shall include the original user's consent to disclosure of
225 the content of electronic communications to the trustee, unless the original user's account was a

226 higher education institutional account and the original user was 25 years of age or younger at the
227 time of their death;

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

230 (iv) if requested by the custodian:

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

233 (B) evidence linking the account to the trust.

234 (c) Unless otherwise ordered by the court, directed by the user or provided in a trust, a
235 custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of
236 electronic communications sent or received by an original or successor user and stored, carried
237 or maintained by the custodian in an account of the trust and any digital assets, other than the
238 content of electronic communications, in which the trust has a right or interest if the trustee
239 provides to the custodian:

240 (i) each of the records required pursuant to clauses (i) and (iii) or requested pursuant to
241 clause (iv) of subsection (b); and

242 (ii) a certified copy of the trust instrument or a certification of the trust under chapter
243 203E.

244 Section 9. Disclosure of Digital Assets to Conservator of Protected Person

245 (a) After an opportunity for a hearing under chapter 190B, the court may grant a
246 conservator access to the digital assets of a protected person.

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

251 (i) a written request for disclosure in physical or electronic form;

252 (ii) an attested copy of the court order that gives the conservator authority over the digital
253 assets of the protected person; and

254 (iii) if requested by the custodian:

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

257 (B) evidence linking the account to the protected person.

258 (c) A conservator with general authority to manage the assets of a protected person may
259 request a custodian of the digital assets of the protected person to suspend or terminate an
260 account of the protected person for good cause. A request made under this section shall be
261 accompanied by an attested copy of the court order giving the conservator authority over the
262 protected person's property.

263 Section 10. Fiduciary Duty and Authority

264 (a) The legal duties imposed on a fiduciary charged with managing tangible property
265 apply to the management of digital assets, including:

266 (i) the duty of care;

267 (ii) the duty of loyalty; and

268 (iii) the duty of confidentiality.

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

270 (i) except as otherwise provided in sections 3 or 4, is subject to the applicable terms-of-
271 service agreement;

272 (ii) is subject to other applicable law, including copyright law;

273 (iii) is limited by the scope of the fiduciary's duties; and

274 (iv) shall not be used to impersonate the user.

275 (c) A fiduciary with authority over the property of a decedent, protected person, principal
276 or settlor has the right to access any digital asset in which the decedent, protected person,
277 principal or settlor had a right or interest and that is not held by a custodian or subject to a terms-
278 of-service agreement.

279 (d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of
280 the property of the decedent, protected person, principal or settlor for the purpose of applicable
281 computer fraud and unauthorized computer access laws, including section 120F of chapter 266.

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

284 (i) has the right to access the property and any digital asset stored in it; and

285 (ii) is an authorized user for the purpose of computer fraud and unauthorized computer
286 access laws, including section 120F of chapter 266.

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

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

292 (i) if the user is deceased, a certified copy of the death certificate of the user;

293 (ii) an attested copy of the letter of appointment of the representative or a small-estate
294 affidavit or court order, court order, power of attorney or trust giving the fiduciary authority over
295 the account; and

296 (iii) if requested by the custodian:

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

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

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

302 Section 16. Custodian Compliance and Immunity

303 (a) Not later than 60 days after receipt of the information required under sections 6 to 9,
304 inclusive, a custodian shall comply with a request under this chapter from a fiduciary or
305 designated recipient to disclose digital assets or terminate an account. If the custodian fails to
306 comply, the fiduciary or designated recipient may apply to the court for an order directing
307 compliance.

308 (b) An order under subsection (a) directing compliance shall contain a finding that
309 compliance is not in violation of 18 U.S.C. section 2702, as amended.

310 (c) A custodian may notify the user that a request for disclosure or to terminate an
311 account was made under this chapter.

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

315 (e) This chapter does not limit a custodian's ability to obtain or require a fiduciary or
316 designated recipient requesting disclosure or termination under this chapter to obtain a court
317 order which:

318 (i) specifies that an account belongs to the protected person or principal;

319 (ii) specifies that there is sufficient consent from the protected person or principal to
320 support the requested disclosure; and

321 (iii) contains a finding required by any applicable state or federal law.

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

324 SECTION 2. Chapter 201G of the General Laws, as inserted by section 1, shall take
325 effect 1 year after enactment.