

Senate Bill 54

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Estate Planning Section)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Defines "digital accounts" and "digital assets" for purposes of administration of estates and trusts. Requires custodian of digital accounts and digital assets to transfer, deliver or provide access to accounts or electronic copies of assets to personal representative, conservator or settlor upon written request.

A BILL FOR AN ACT

1
2 Relating to digital property; creating new provisions; and amending ORS 111.005, 114.305, 114.505,
3 125.005, 125.445, 130.010 and 179.610.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 111.005 is amended to read:

6 111.005. As used in ORS chapters 111, 112, 113, 114, 115, 116 and 117, unless the context requires
7 otherwise:

8 (1) "Abate" means to reduce a devise on account of the insufficiency of the estate to pay all
9 claims, expenses and devises in full.

10 (2) "Action" includes suits and legal proceedings.

11 (3) "Administration" means any proceeding relating to the estate of a decedent, whether the
12 decedent died testate, intestate or partially intestate.

13 (4) "Advancement" means a gift by a decedent to an heir to enable the donee to anticipate the
14 inheritance to the extent of the gift.

15 (5) "All purposes of intestate succession" means succession by, through or from a person, both
16 lineal and collateral.

17 (6) "Assets" includes real[,] **and** personal [*and intangible*] property.

18 (7) "Claim" includes liabilities of a decedent, whether arising in contract, in tort or otherwise.

19 (8) "Court" or "probate court" means the court in which jurisdiction of probate matters, causes
20 and proceedings is vested as provided in ORS 111.075.

21 (9) "Decedent" means a person who has died leaving property that is subject to administration.

22 (10) "Devise," when used as a noun, means property disposed of by a will, and includes
23 "legacy" and "bequest."

24 (11) "Devise," when used as a verb, means to dispose of property by a will, and includes
25 "bequeath."

26 (12) "Devisee" includes "legatee" and "beneficiary."

27 (13) **"Digital accounts" includes, but is not limited to, electronic mail, financial, personal**
28 **and other online accounts.**

29 (14) **"Digital assets" includes, but is not limited to, text, images, multimedia information**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **or other property stored in a digital format, whether stored on a server, computer or other**
2 **physical device or in an electronic medium, regardless of the ownership of the physical device**
3 **or electronic medium in which the digital asset is stored. “Digital assets” includes, but is**
4 **not limited to, words, characters, codes or contractual rights necessary to access the digital**
5 **assets.**

6 [(13)] (15) “Distributee” means a person entitled to any property of a decedent under the will
7 of the decedent or under intestate succession.

8 [(14)] (16) “Domicile” means the place of abode of a person, where the person intends to remain
9 and to which, if absent, the person intends to return.

10 [(15)] (17) “Estate” means the real and personal property of a decedent, as from time to time
11 changed in form by sale, reinvestment or otherwise, and augmented by any accretions or additions
12 thereto and substitutions therefor or diminished by any decreases and distributions therefrom.

13 [(16)] (18) “Funeral” includes burial or other disposition of the remains of a decedent, including
14 the plot or tomb and other necessary incidents to the disposition of the remains.

15 [(17)] (19) “General devise” means a devise chargeable generally on the estate of a testator and
16 not distinguishable from other parts thereof or not so given as to amount to a specific devise.

17 [(18)] (20) “Heir” means any person, including the surviving spouse, who is entitled under
18 intestate succession to the property of a decedent who died wholly or partially intestate.

19 [(19)] (21) “Interested person” includes heirs, devisees, children, spouses, creditors and any oth-
20 ers having a property right or claim against the estate of a decedent that may be affected by the
21 proceeding. It also includes fiduciaries representing interested persons.

22 [(20)] (22) “Intestate” means one who dies without leaving a valid will, or the circumstance of
23 dying without leaving a valid will, effectively disposing of all the estate.

24 [(21)] (23) “Intestate succession” means succession to property of a decedent who dies intestate
25 or partially intestate.

26 [(22)] (24) “Issue” includes adopted children and their issue and, when used to refer to persons
27 who take by intestate succession, includes all lineal descendants, except those who are the lineal
28 descendants of living lineal descendants.

29 [(23)] (25) “Net estate” means the real and personal property of a decedent, except property used
30 for the support of the surviving spouse and children and for the payment of expenses of adminis-
31 tration, funeral expenses, claims and taxes.

32 [(24)] (26) “Net intestate estate” means any part of the net estate of a decedent not effectively
33 disposed of by the will.

34 [(25)] (27) “Personal property” includes all **tangible and intangible** property, other than real
35 property, **and includes digital assets.**

36 [(26)] (28) “Personal representative” includes executor, administrator, administrator with will
37 annexed and administrator de bonis non, but does not include special administrator.

38 [(27)] (29) “Property” includes *both* real and personal property.

39 [(28)] (30) “Real property” includes all legal and equitable interests in land, in fee and for life.

40 [(29)] (31) “Settlement” includes, as to the estate of a decedent, the full process of adminis-
41 tration, distribution and closing.

42 [(30)] (32) “Specific devise” means a devise of a specific thing or specified part of the estate of
43 a testator that is so described as to be capable of identification. It is a gift of a part of the estate
44 identified and differentiated from all other parts.

45 [(31)] (33) “Will” includes codicil; it also includes a testamentary instrument that merely ap-

1 points an executor or that merely revokes or revives another will.

2 **SECTION 2.** ORS 114.305 is amended to read:

3 114.305. Subject to the provisions of ORS 97.130 (2) and (10) and except as restricted or other-
 4 wise provided by the will of the decedent, **by** a document of anatomical gift under ORS 97.965 or
 5 by court order, a personal representative, acting reasonably for the benefit of interested persons, is
 6 authorized to:

7 (1) Direct and authorize disposition of the remains of the decedent pursuant to ORS 97.130 and
 8 incur expenses for the funeral, burial or other disposition of the remains in a manner suitable to the
 9 condition in life of the decedent. Only those funeral expenses necessary for a plain and decent fu-
 10 neral and disposition of the remains of the decedent may be paid from the estate if the assets are
 11 insufficient to pay the claims of the Department of Human Services and the Oregon Health Au-
 12 thority for the net amount of public assistance, as defined in ORS 411.010, paid to or for the
 13 decedent and for care and maintenance of any decedent who was at a state institution to the extent
 14 provided in ORS 179.610 to 179.770.

15 (2) Retain assets owned by the decedent pending distribution or liquidation.

16 (3) Receive assets from fiduciaries or other sources.

17 (4) Complete, compromise or refuse performance of contracts of the decedent that continue as
 18 obligations of the estate, as the personal representative may determine under the circumstances. In
 19 performing enforceable contracts by the decedent to convey or lease real property, the personal
 20 representative, among other courses of action, may:

21 (a) Execute and deliver a deed upon satisfaction of any sum remaining unpaid or upon receipt
 22 of the note of the purchaser adequately secured; or

23 (b) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with
 24 the escrow agreement, be paid to the successors of the decedent, as designated in the escrow
 25 agreement.

26 (5) Satisfy written pledges of the decedent for contributions, whether or not the pledges consti-
 27 tuted binding obligations of the decedent or were properly presented as claims.

28 (6) Deposit funds not needed to meet currently payable debts and expenses, and not immediately
 29 distributable, in bank or savings and loan association accounts, or invest the funds in bank or
 30 savings and loan association certificates of deposit, or federally regulated money-market funds and
 31 short-term investment funds suitable for investment by trustees under ORS 130.750 to 130.775, or
 32 short-term United States Government obligations.

33 (7) Abandon burdensome property when it is valueless, or is so encumbered or is in a condition
 34 that it is of no benefit to the estate.

35 (8) Vote stocks or other securities in person or by general or limited proxy.

36 (9) Pay calls, assessments and other sums chargeable or accruing against or on account of se-
 37 curities.

38 (10) Sell or exercise stock subscription or conversion rights.

39 (11) Consent, directly or through a committee or other agent, to the reorganization, consol-
 40 idation, merger, dissolution or liquidation of a corporation or other business enterprise.

41 (12) Hold a security in the name of a nominee or in other form without disclosure of the interest
 42 of the estate, but the personal representative is liable for any act of the nominee in connection with
 43 the security so held.

44 (13) Insure the assets of the estate against damage and loss, and insure the personal represen-
 45 tative against liability to third persons.

1 (14) Advance or borrow money with or without security.

2 (15) Compromise, extend, renew or otherwise modify an obligation owing to the estate. A per-
 3 sonal representative who holds a mortgage, pledge, lien or other security interest may accept a
 4 conveyance or transfer of the encumbered asset in lieu of foreclosure in full or partial satisfaction
 5 of the indebtedness.

6 (16) Accept other real property in part payment of the purchase price of real property sold by
 7 the personal representative.

8 (17) Pay taxes, assessments and expenses incident to the administration of the estate.

9 (18) Employ qualified persons, including attorneys, accountants and investment advisers, to ad-
 10 vise and assist the personal representative and to perform acts of administration, whether or not
 11 discretionary, on behalf of the personal representative.

12 (19) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of
 13 the estate and of the personal representative in the performance of duties as personal represen-
 14 tative.

15 (20) Prosecute claims of the decedent including those for personal injury or wrongful death.

16 (21) Continue any business or venture in which the decedent was engaged at the time of death
 17 to preserve the value of the business or venture.

18 (22) Incorporate or otherwise change the business form of any business or venture in which the
 19 decedent was engaged at the time of death.

20 (23) Discontinue and wind up any business or venture in which the decedent was engaged at the
 21 time of death.

22 (24) Provide for exoneration of the personal representative from personal liability in any con-
 23 tract entered into on behalf of the estate.

24 (25) Satisfy and settle claims and distribute the estate as provided in ORS chapters 111, 112, 113,
 25 114, 115, 116 and 117.

26 **(26) Access, take control of, possess, handle, conduct, continue, distribute, dispose of or**
 27 **terminate any digital assets and digital accounts of the decedent.**

28 [(26)] (27) Perform all other acts required or permitted by law or by the will of the decedent.

29 **SECTION 3. Section 4 of this 2013 Act is added to and made a part of ORS chapter 114.**

30 **SECTION 4. (1) As used in this section, “custodian” means a person, business or other**
 31 **entity that electronically stores the digital assets of a decedent or that maintains, manages,**
 32 **controls or operates the digital accounts owned or accessed by a decedent or a decedent’s**
 33 **agents or representatives.**

34 **(2) Within 30 days after receipt of a written request from the personal representative or**
 35 **an order from the court administering the estate of a decedent, a custodian shall transfer,**
 36 **deliver or provide to the personal representative:**

37 **(a) Access to or possession of digital accounts of the decedent that are maintained,**
 38 **managed, controlled or operated by the custodian, including but not limited to the ability to**
 39 **download and print information contained in the accounts; or**

40 **(b) Electronic copies of any digital assets of the decedent stored by the custodian.**

41 **(3) A custodian may not destroy or dispose of a digital asset or digital account of the**
 42 **decedent for two years after the custodian receives a request or order under subsection (2)**
 43 **of this section, except that:**

44 **(a) If a custodian has complied with subsection (2)(a) of this section, the custodian may**
 45 **destroy or dispose of a digital account nine months after the date of compliance; and**

1 **(b) If a custodian has complied with subsection (2)(b) of this section, the custodian may**
 2 **destroy or dispose of a digital asset 60 days after the date of compliance.**

3 **(4) A custodian that transfers, delivers, provides access to or allows possession of digital**
 4 **assets or digital accounts as provided in this section is discharged and released from liability**
 5 **or responsibility for the digital assets and digital accounts.**

6 **SECTION 5.** ORS 114.505 is amended to read:

7 114.505. As used in ORS 114.505 to 114.560:

8 (1) "Affiant" means the person or persons signing an affidavit filed under ORS 114.515.

9 (2) "Claiming successors" means:

10 (a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, an
 11 estate administrator of the Department of State Lands appointed under ORS 113.235;

12 (b) If the decedent died testate, the devisee or devisees of the decedent; and

13 (c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS
 14 114.545 (1)(c) who has not been paid or reimbursed the full amount owed such creditor within 60
 15 days after the date of the decedent's death.

16 (3) "Estate" means **the decedent's real and personal property, including digital assets,** subject
 17 to administration in Oregon.

18 **SECTION 6.** ORS 125.005 is amended to read:

19 125.005. As used in this chapter:

20 (1) "Conservator" means a person appointed as a conservator under the provisions of this
 21 chapter.

22 (2) **"Digital accounts" includes, but is not limited to, electronic mail, financial, personal**
 23 **and other online accounts.**

24 (3) **"Digital assets" includes, but is not limited to, text, images, multimedia information**
 25 **or other property stored in a digital format, whether stored on a server, computer or other**
 26 **physical device or in an electronic medium, regardless of the ownership of the physical device**
 27 **or electronic medium in which the digital asset is stored. "Digital assets" includes, but is**
 28 **not limited to, words, characters, codes or contractual rights necessary to access the digital**
 29 **assets.**

30 [(2)] (4) "Fiduciary" means a guardian or conservator appointed under the provisions of this
 31 chapter or any other person appointed by a court to assume duties with respect to a protected
 32 person under the provisions of this chapter.

33 [(3)] (5) "Financially incapable" means a condition in which a person is unable to manage fi-
 34 nancial resources of the person effectively for reasons including, but not limited to, mental illness,
 35 mental retardation, physical illness or disability, chronic use of drugs or controlled substances,
 36 chronic intoxication, confinement, detention by a foreign power or disappearance. "Manage financial
 37 resources" means those actions necessary to obtain, administer and dispose of real and personal
 38 property, intangible property, business property, **digital assets,** benefits and income.

39 [(4)] (6) "Guardian" means a person appointed as a guardian under the provisions of this chap-
 40 ter.

41 [(5)] (7) "Incapacitated" means a condition in which a person's ability to receive and evaluate
 42 information effectively or to communicate decisions is impaired to such an extent that the person
 43 presently lacks the capacity to meet the essential requirements for the person's physical health or
 44 safety. "Meeting the essential requirements for physical health and safety" means those actions
 45 necessary to provide the health care, food, shelter, clothing, personal hygiene and other care with-

1 out which serious physical injury or illness is likely to occur.

2 [(6)] (8) “Minor” means any person who has not attained 18 years of age.

3 [(7)] (9) “Protected person” means a person for whom a protective order has been entered.

4 [(8)] (10) “Protective order” means an order of a court appointing a fiduciary or any other order
5 of the court entered for the purpose of protecting the person or estate of a respondent or protected
6 person.

7 [(9)] (11) “Protective proceeding” means a proceeding under this chapter.

8 [(10)] (12) “Respondent” means a person for whom entry of a protective order is sought in a
9 petition filed under ORS 125.055.

10 [(11)] (13) “Visitor” means a person appointed by the court under ORS 125.150 for the purpose
11 of interviewing and evaluating a respondent or protected person.

12 **SECTION 7.** ORS 125.445 is amended to read:

13 125.445. A conservator may perform the following acts without prior court authorization or
14 confirmation if the conservator is acting reasonably to accomplish the purposes for which the
15 conservator was appointed:

16 (1) Collect, hold and retain assets of the estate including land wherever situated, until, in the
17 judgment of the conservator, disposition of the assets should be made. Assets of the estate may be
18 retained even though those assets include property in which the conservator is personally inter-
19 ested.

20 (2) Receive additions to the estate.

21 (3) Continue or participate in the operation of any business or other enterprise.

22 (4) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary
23 capacity, holds an undivided interest.

24 (5) Invest and reinvest estate assets and funds in the same manner as a trustee may invest and
25 reinvest.

26 (6) Deposit estate funds in a bank including a bank operated by the conservator.

27 (7) Except as limited in ORS 125.430, acquire or dispose of an estate asset including real prop-
28 erty wherever situated for cash or on credit, at public or private sale.

29 (8) Manage, develop, improve, exchange, partition, change the character of or abandon an estate
30 asset in connection with the exercise of any power vested in the conservator.

31 (9) Make ordinary or extraordinary repairs or alterations in buildings or other structures, de-
32 molish any improvements, or raze existing or erect new party walls or buildings.

33 (10) Subdivide, develop or dedicate land to public use, make or obtain the vacation of plats and
34 adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving
35 considerations, and dedicate easements to public use without consideration.

36 (11) Enter for any purpose into a lease as lessor or lessee with or without option to purchase
37 or renew for a term within or extending beyond the term of the conservatorship.

38 (12) Enter into a lease or arrangement for exploration and removal of minerals or other natural
39 resources or enter into a pooling or unitization agreement.

40 (13) Grant an option involving disposition of an estate asset or take an option for acquisition
41 of any asset.

42 (14) Vote a security, in person or by general or limited proxy.

43 (15) Pay calls, assessments and any other sums chargeable or accruing against or on account
44 of securities.

45 (16) Sell or exercise stock subscription or conversion rights, or consent, directly or through a

1 committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of
2 a corporation or other business enterprise.

3 (17) Hold a security in the name of a nominee or in other form without disclosure of the con-
4 servatorship so that title to the security may pass by delivery. The conservator is liable for any act
5 of the nominee in connection with the stock so held.

6 (18) Insure the assets of the estate against damage or loss, and the conservator against liability
7 with respect to third persons.

8 (19) Borrow money to be repaid from estate assets or otherwise and mortgage or pledge property
9 of the protected person as security therefor.

10 (20) Advance money for the protection of the estate or the protected person, and for all ex-
11 penses, losses and liability sustained in the administration of the estate or because of the holding
12 or ownership of any estate assets. The conservator has a lien on the estate as against the protected
13 person for advances so made.

14 (21) Pay or contest any claim, settle a claim by or against the estate or the protected person
15 by compromise, arbitration or otherwise, and release, in whole or in part, any claim belonging to
16 the estate to the extent that the claim is uncollectible.

17 (22) Pay taxes, assessments, compensation of the conservator and other expenses incurred in the
18 collection, care, administration and protection of the estate.

19 (23) Allocate items of income or expense to either income or principal, including creation of
20 reserves out of income for depreciation, obsolescence or amortization, or for depletion in mineral
21 or timber properties.

22 (24) Pay any sum distributable to a protected person or a dependent of a protected person by
23 paying the sum to the protected person or the dependent, or by paying the sum either to a guardian,
24 custodian under ORS 126.700, or conservator of the protected person or, if none, to a relative or
25 other person with custody of the protected person.

26 (25) Employ persons, including attorneys, auditors, investment advisers or agents, even though
27 they are associated with the conservator, to advise or assist the conservator in the performance of
28 administrative duties, acting upon their recommendation without independent investigation, and in-
29 stead of acting personally, employing one or more agents to perform any act of administration,
30 whether or not discretionary, except that payment to the conservator's attorney of record is subject
31 to the provisions of ORS 125.095.

32 (26) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of
33 estate assets and of the conservator in the performance of duties.

34 (27) Prosecute claims of the protected person including those for the personal injury of the
35 protected person.

36 (28) Execute and deliver all instruments that will accomplish or facilitate the exercise of the
37 powers vested in the conservator.

38 **(29) Access, take control of, possess, handle, conduct, continue, distribute, dispose of or**
39 **terminate any digital assets and digital accounts of the protected person.**

40 **SECTION 8. Section 9 of this 2013 Act is added to and made a part of ORS chapter 125.**

41 **SECTION 9. (1) As used in this section, "custodian" means a person, business or other**
42 **entity that electronically stores the digital assets of a protected person or that maintains,**
43 **manages, controls or operates the digital accounts owned or accessed by a protected person**
44 **or a protected person's agents or representatives.**

45 **(2) Within 30 days after receipt of a written request from the conservator or an order**

1 from the court administering the estate of the protected person, a custodian shall transfer,
 2 deliver or provide to the conservator:

3 (a) Access to or possession of digital accounts of the protected person that are main-
 4 tained, managed, controlled or operated by the custodian, including but not limited to the
 5 ability to download and print information contained in the accounts; or

6 (b) Electronic copies of any digital assets of the protected person stored by the custodian.

7 (3) A custodian may not destroy or dispose of a digital asset or digital account of the
 8 protected person for two years after the custodian receives a request or order under sub-
 9 section (2) of this section, except that:

10 (a) If a custodian has complied with subsection (2)(a) of this section, the custodian may
 11 destroy or dispose of a digital account nine months after the date of compliance; and

12 (b) If a custodian has complied with subsection (2)(b) of this section, the custodian may
 13 destroy or dispose of a digital asset 60 days after the date of compliance.

14 (4) A custodian that transfers, delivers, provides access to or allows possession of digital
 15 assets or digital accounts as provided in this section is discharged and released from liability
 16 or responsibility for the digital assets and digital accounts.

17 **SECTION 10.** ORS 130.010 is amended to read:

18 130.010. For the purposes of this chapter:

19 (1) "Ascertainable standard" means an ascertainable standard relating to an individual's health,
 20 education, support or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the
 21 Internal Revenue Code, as in effect on January 1, 2006.

22 (2) "Beneficiary" means a person that:

23 (a) Has a present or future beneficial interest in a trust, whether vested or contingent; or

24 (b) Holds a power of appointment over trust property in a capacity other than that of trustee.

25 (3) "Charitable trust" means a trust, or portion of a trust, described in ORS 130.170 (1).

26 (4) "Conservator" means a person appointed by a court to administer the estate of a minor or
 27 adult individual.

28 (5) "Digital accounts" includes, but is not limited to, electronic mail, financial, personal
 29 and other online accounts.

30 (6) "Digital assets" includes, but is not limited to, text, images, multimedia information
 31 or other property stored in a digital format, whether stored on a server, computer or other
 32 physical device or in an electronic medium, regardless of the ownership of the physical device
 33 or electronic medium in which the digital asset is stored. "Digital assets" includes, but is
 34 not limited to, words, characters, codes or contractual rights necessary to access the digital
 35 assets.

36 [(5)] (7) "Environmental law" means a federal, state or local law, rule, regulation or ordinance
 37 relating to protection of the environment.

38 [(6)] (8) "Financial institution" has the meaning given that term in ORS 706.008.

39 [(7)] (9) "Financially incapable" has the meaning given that term in ORS 125.005. "Financially
 40 capable" means not financially incapable.

41 [(8)] (10) "Guardian" means a person appointed by a court to make decisions regarding the
 42 support, care, education, health and welfare of a minor or adult individual. "Guardian" does not
 43 include a guardian ad litem.

44 [(9)] (11) "Interests of the beneficiaries" means the beneficial interests provided in the terms of
 45 a trust.

1 [(10)] (12) “Permissible distributee” means a beneficiary who is currently eligible to receive
2 distributions of trust income or principal, whether the distribution is mandatory or discretionary.

3 [(11)] (13) “Person” means an individual, corporation, business trust, partnership, limited liability
4 company, association, joint venture, public body as defined in ORS 174.109 or any other legal or
5 commercial entity.

6 [(12)] (14) “Power of withdrawal” means a presently exercisable general power of appointment,
7 other than a power exercisable by a trustee that is limited by an ascertainable standard or that is
8 exercisable by another person only upon consent of the trustee or a person holding an adverse interest.
9

10 [(13)] (15) “Property” means anything, **including digital assets**, that may be the subject of
11 ownership, whether real or personal, legal or equitable, or any interest therein.

12 [(14)] (16) “Qualified beneficiary” means a beneficiary who:

13 (a) Is a permissible distributee on the date the beneficiary’s qualification is determined;

14 (b) Would be a permissible distributee if the interests of all permissible distributees described
15 in paragraph (a) of this subsection terminated on the date the beneficiary’s qualification is determined;
16 or

17 (c) Would be a permissible distributee if the trust terminated on the date the beneficiary’s
18 qualification is determined.

19 [(15)] (17) “Revocable trust” means a trust that can be revoked by the settlor without the consent
20 of the trustee or a person holding an adverse interest.

21 [(16)] (18) “Settlor” means a person, including a testator, who creates a trust or contributes
22 property to a trust. If more than one person creates or contributes property to a trust, each person
23 is a settlor of the portion of the trust property attributable to that person’s contribution and of the
24 portion as to which that person has the power to revoke or withdraw.

25 [(17)] (19) “Spendthrift provision” means a term of a trust that restrains both voluntary and involuntary
26 transfer of a beneficiary’s interest.

27 [(18)] (20) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
28 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
29 United States. “State” includes an Indian tribe or band recognized by federal law or formally acknowledged
30 by a state.

31 [(19)] (21) “Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s
32 provisions as expressed in the trust instrument or as may be established by other evidence that
33 would be admissible in a judicial proceeding.

34 [(20)] (22) “Trust instrument” means an instrument executed by a settlor that contains terms
35 of the trust, including any amendments to the instrument.

36 [(21)] (23) “Trustee” means an original trustee, an additional trustee, a successor trustee or a
37 cotrustee.

38 **SECTION 11. Section 12 of this 2013 Act is added to and made a part of ORS chapter 130.**

39 **SECTION 12. (1) As used in this section, “custodian” means a person that electronically**
40 **stores the digital assets of the trust or the settlor or that maintains, manages, controls or**
41 **operates the digital accounts owned or accessed by the trust or the settlor or the trust’s or**
42 **the settlor’s agents or representatives.**

43 **(2) Within 30 days after receipt of a written request from the settlor or an order from**
44 **the court having jurisdiction over the trust, a custodian shall transfer, deliver or provide to**
45 **the settlor:**

1 (a) Access to or possession of digital accounts of the trust or settlor that are maintained,
2 managed, controlled or operated by the custodian, including but not limited to the ability to
3 download and print information contained in the accounts; or

4 (b) Electronic copies of any digital assets of the trust or settlor stored by the custodian.

5 (3) A custodian may not destroy or dispose of a digital asset or digital account of the
6 trust or settlor for two years after the custodian receives a request or order under sub-
7 section (2) of this section, except that:

8 (a) If a custodian has complied with subsection (2)(a) of this section, the custodian may
9 destroy or dispose of a digital account nine months after the date of compliance; and

10 (b) If a custodian has complied with subsection (2)(b) of this section, the custodian may
11 destroy or dispose of a digital asset 60 days after the date of compliance.

12 (4) A custodian that transfers, delivers, provides access to or allows possession of digital
13 assets or digital accounts as provided in this section is discharged and released from liability
14 or responsibility for the digital assets and digital accounts.

15 **SECTION 13.** ORS 179.610 is amended to read:

16 179.610. As used in ORS 179.610 to 179.770, unless the context requires otherwise:

17 (1) "Authorized representative" means an individual or entity appointed under authority of ORS
18 chapter 125, as guardian or conservator of a person, who has the ability to control the person's fi-
19 nances, and any other individual or entity holding funds or receiving benefits or income on behalf
20 of any person.

21 (2) "Care" means all services rendered by the state institutions as described in ORS 179.321 or
22 by the Department of Corrections, Department of Human Services or Oregon Health Authority on
23 behalf of those institutions. These services include, but are not limited to, such items as medical
24 care, room, board, administrative costs and other costs not otherwise excluded by law.

25 (3) "Decedent's estate" has the meaning given "estate" in ORS 111.005 [(15)] (17).

26 (4) "Person," "person in a state institution" or "person at a state institution," or any similar
27 phrase, means an individual who is or has been at a state institution described in ORS 179.321.

28 (5) "Personal estate" means all income and benefits as well as all assets, including all personal
29 and real property of a living person, and includes assets held by the person's authorized represen-
30 tative and all other assets held by any other individual or entity holding funds or receiving benefits
31 or income on behalf of any person.

32