

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 59th Legislature (2024)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3778

 By: Duel

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8 COMMITTEE SUBSTITUTE

9 An Act relating to digital assets; creating the
10 Revised Uniform Fiduciary Access to Digital Assets
11 Act; defining terms; clarifying applicability of act;
12 permitting user to use online tool to direct
13 custodian to disclose or not disclose certain digital
14 assets; providing procedure if online tool not used;
15 establishing that user's direction overrides certain
16 contrary terms-of-service agreement; clarifying that
17 act does not impair certain right; clarifying that
18 act does not expand nor give certain rights;
19 permitting modification or elimination of certain
20 access; permitting custodian grant certain access;
21 permitting custodian to provide certain copy of
22 digital asset; permitting reasonable administrative
23 charge; specifying that custodian need not disclose
24 certain digital asset; permitting custodian to not
 disclose certain digital assets that impose undue
 burden; permitting seeking of certain court order;
 directing that custodian make certain disclosures to
 personal representative of the estate of the user;
 directing custodian make certain disclosures of
 catalog of electronic communications to personal
 representative; directing custodian make certain
 disclosures of electronic communications to agent;
 directing custodian make certain disclosure of
 catalog of electronic communications to certain
 agents with certain authority; directing that
 custodian make certain disclosures to trustee;
 permitting court to grant access to guardian of
 certain digital assets; directing custodian to make
 certain disclosures of electronic communications to

1 guardian; permitting guardian with general authority
2 to suspend or terminate certain accounts for good
3 cause; establishing legal duties of fiduciary charged
4 with management of digital assets; clarifying
5 authority of fiduciary or designated recipient's
6 authority; permitting fiduciary with certain
7 authority certain right of access to certain digital
8 assets; clarifying that fiduciary acting within
9 certain scope is an authorized user; permitting
10 custodian to disclose certain information to
11 fiduciary when necessary to terminate certain
12 account; permitting fiduciary to request termination
13 of user's account; directing that custodian comply
14 with request within time frame; permitting fiduciary
15 or designated recipient to seek court order;
16 directing that order must not violate certain federal
17 law; permitting custodian to notify user of certain
18 requests; permitting custodian to deny certain
19 requests; clarifying that act does not limit certain
20 abilities of custodian; limiting liability; directing
21 for certain consideration in application of act;
22 clarifying that act modifies, limits, or supersedes
23 certain law; providing for severability; providing
24 for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3101 of Title 58, unless there
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Revised Uniform
Fiduciary Access to Digital Assets Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3102 of Title 58, unless there
is created a duplication in numbering, reads as follows:

As used in this act:

- 1 1. "Account" means an arrangement under a terms-of-service
2 agreement in which a custodian carries, maintains, processes,
3 receives, or stores a digital asset of the user or provides goods or
4 services to the user;
- 5 2. "Agent" means an attorney-in-fact granted authority under a
6 durable or nondurable power of attorney;
- 7 3. "Carries" means engages in the transmission of an electronic
8 communication;
- 9 4. "Catalog of electronic communications" means information
10 that identifies each person with which a user has had an electronic
11 communication, the time and date of the communication, and the
12 electronic address of the person;
- 13 5. "Guardian" means a person appointed by a court to manage the
14 estate of a living individual. The term includes a limited
15 guardian;
- 16 6. "Content of an electronic communication" means information
17 concerning the 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
20 electronic-communication service to the public or is
21 carried or maintained by a custodian providing a
22 remote-computing service to the public, and
23 c. is not readily accessible to the public;
- 24 7. "Court" means the court of proper jurisdiction;

- 1 8. "Custodian" means a person who carries, maintains,
2 processes, receives, or stores a digital asset of a user;
- 3 9. "Designated recipient" means a person chosen by a user using
4 an online tool to administer digital assets of the user;
- 5 10. "Digital asset" means an electronic record in which an
6 individual has a right or interest. The term does not include an
7 underlying asset or liability unless the asset or liability is
8 itself an electronic record;
- 9 11. "Electronic" means relating to technology having
10 electrical, digital, magnetic, wireless, optical, electromagnetic,
11 or similar capabilities;
- 12 12. "Electronic communication" has the meaning set forth in 18
13 U.S.C., Section 2510(12);
- 14 13. "Electronic-communication service" means a custodian that
15 provides a user the ability to send or receive an electronic
16 communication;
- 17 14. "Fiduciary" means an original, additional, or successor
18 personal representative, guardian, agent, or trustee;
- 19 15. "Information" means data, text, images, videos, sounds,
20 codes, computer programs, software, databases, or the like;
- 21 16. "Online tool" means an electronic service provided by a
22 custodian that allows the user, in an agreement distinct from the
23 terms-of-service agreement between the custodian and user, to
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1 provide directions for disclosure or nondisclosure of digital assets
2 to a third person;

3 17. "Person" means an individual, estate, business or nonprofit
4 entity, public corporation, government or governmental subdivision,
5 agency, or instrumentality, or other legal entity;

6 18. "Personal representative" means an executor, administrator,
7 special administrator, or person that performs substantially the
8 same function under the laws of this state other than this act;

9 19. "Power of attorney" means a record that grants an agent
10 authority to act in the place of a principal;

11 20. "Principal" means an individual who grants authority to an
12 agent in a power of attorney;

13 21. "Protected person" means an individual for whom a guardian
14 has been appointed. The term includes an individual for whom an
15 application for the appointment of a guardian is pending;

16 22. "Record" means information that is inscribed on a tangible
17 medium or that is stored in an electronic or other medium and is
18 retrievable in perceivable form;

19 23. "Remote-computing service" means a custodian that provides
20 to a user computer processing services or the storage of digital
21 assets by means of an electronic communications system, as defined
22 in 18 U.S.C., Section 2510(14);

23 24. "Terms-of-service agreement" means an agreement that
24 controls the relationship between a user and a custodian;

1 25. "Trustee" means a fiduciary with legal title to property
2 under an agreement or declaration that creates a beneficial interest
3 in another. The term includes a successor trustee;

4 26. "User" means a person who has an account with a custodian;
5 and

6 27. "Will" includes a codicil, testamentary instrument that
7 only appoints an executor, and instrument that revokes or revises a
8 testamentary instrument.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 3103 of Title 58, unless there
11 is created a duplication in numbering, reads as follows:

12 A. This act applies to:

13 1. A fiduciary acting under a will or power of attorney
14 executed before, on, or after November 1, 2024;

15 2. A personal representative acting for a decedent who died
16 before, on, or after November 1, 2024;

17 3. A guardianship proceeding commenced before, on, or after
18 November 1, 2024; and

19 4. A trustee acting under a trust created before, on, or after
20 November 1, 2024.

21 B. This act applies to a custodian if the user resides in this
22 state or resided in this state at the time of the user's death.

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1 C. This act does not apply to a digital asset of an employer
2 used by an employee in the ordinary course of the employer's
3 business.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3104 of Title 58, unless there
6 is created a duplication in numbering, reads as follows:

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

14 B. If a user has not used an online tool to give direction
15 under subsection A of this section or if the custodian has not
16 provided an online tool, the user may allow or prohibit in a will,
17 trust, power of attorney, or other record, disclosure to a fiduciary
18 of some or all of the user's digital assets, including the content
19 of electronic communications sent or received by the user.

20 C. A user's direction under subsection A or B of this section
21 overrides a contrary provision in a terms-of-service agreement that
22 does not require the user to act affirmatively and distinctly from
23 the user's assent to the terms of service.

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1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3105 of Title 58, unless there
3 is created a duplication in numbering, reads as follows:

4 A. This act does not change or impair a right of a custodian or
5 a user under a terms-of-service agreement to access and use digital
6 assets of the user.

7 B. This act does not give a fiduciary or designated recipient
8 any new or expanded rights other than those held by the user for
9 whom, or for whose estate, the fiduciary or designated recipient
10 acts or represents.

11 C. A fiduciary's or designated recipient's access to digital
12 assets may be modified or eliminated by a user, by federal law, or
13 by a terms-of-service agreement if the user has not provided
14 direction under Section 4 of this act.

15 SECTION 6. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3106 of Title 58, unless there
17 is created a duplication in numbering, reads as follows:

18 A. When disclosing digital assets of a user under this act, the
19 custodian may, at its sole discretion:

20 1. Grant a fiduciary or designated recipient full access to the
21 user's account;

22 2. Grant a fiduciary or designated recipient partial access to
23 the user's account sufficient to perform the tasks with which the
24 fiduciary or designated recipient is charged; or

1 3. Provide a fiduciary or designated recipient a copy of a
2 record of any digital asset that, on the date the custodian received
3 the request for disclosure, the user could have accessed if the user
4 were alive and had full capacity and access to the account.

5 B. A custodian may assess a reasonable administrative charge
6 for the cost of disclosing digital assets under this act.

7 C. A custodian need not disclose under this act a digital asset
8 deleted by a user.

9 D. If a user directs or a fiduciary requests a custodian to
10 disclose under this act some, but not all, of the user's digital
11 assets, the custodian need not disclose the assets if segregation of
12 the assets would impose an undue burden on the custodian. If the
13 custodian believes the direction or request imposes an undue burden,
14 the custodian or fiduciary may seek an order from the court to
15 disclose:

16 1. A subset limited by date of the user's digital assets;

17 2. All of the user's digital assets to the fiduciary or
18 designated recipient;

19 3. None of the user's digital assets; or

20 4. All of the user's digital assets to the court for review in
21 camera.

22 SECTION 7. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3107 of Title 58, unless there
24 is created a duplication in numbering, reads as follows:

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

6 1. A written request for disclosure in physical or electronic
7 form;

8 2. A certified copy of the death certificate of the user;

9 3. A certified copy of the letter of appointment of the
10 representative or a small-estate affidavit or court order;

11 4. Unless the user provided direction using an online tool, a
12 copy of the user's will, trust, power of attorney, or other record
13 evidencing the user's consent to disclosure of the content of
14 electronic communications; and

15 5. If requested by the custodian:

16 a. a number, username, address, or other unique
17 subscriber or account identifier assigned by the
18 custodian to identify the user's account,

19 b. evidence linking the account to the user, or

20 c. a finding by the court that:

21 (1) the user had a specific account with the
22 custodian, identifiable by the information
23 specified in subparagraph a of paragraph 5 of
24 this section,

- 1 (2) disclosure of the content of electronic
2 communications of the user would not violate 18
3 U.S.C., Section 2701 et seq., 47 U.S.C., Section
4 222, or other applicable law,
5 (3) unless the user provided direction using an
6 online tool, the user consented to disclosure of
7 the content of electronic communications, or
8 (4) disclosure of the content of electronic
9 communications of the user is reasonably
10 necessary for administration of the estate.

11 SECTION 8. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3108 of Title 58, unless there
13 is created a duplication in numbering, reads as follows:

14 Unless the user prohibited disclosure of digital assets or the
15 court directs otherwise, a custodian shall disclose to the personal
16 representative of the estate of a deceased user, a catalog of
17 electronic communications sent or received by the user and digital
18 assets, other than the content of electronic communications, of the
19 user, if the representative gives the custodian:

- 20 1. A written request for disclosure in physical or electronic
21 form;
22 2. A certified copy of the death certificate of the user;
23 3. A certified copy of the letter of appointment of the
24 representative or a small-estate affidavit or court order; and

1 4. If requested by the custodian:

- 2 a. a number, username, address, or other unique
3 subscriber or account identifier assigned by the
4 custodian to identify the user's account,
5 b. evidence linking the account to the user,
6 c. an affidavit stating that disclosure of the user's
7 digital assets is reasonably necessary for
8 administration of the estate, or
9 d. a finding by the court that:

10 (1) the user had a specific account with the
11 custodian, identifiable by the information
12 specified in subparagraph a of paragraph 4 of
13 this section, or

14 (2) disclosure of the user's digital assets is
15 reasonably necessary for administration of the
16 estate.

17 SECTION 9. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 3109 of Title 58, unless there
19 is created a duplication in numbering, reads as follows:

20 To the extent a power of attorney expressly grants an agent
21 authority over the content of electronic communications sent or
22 received by the principal and unless directed otherwise by the
23 principal or the court, a custodian shall disclose to the agent the
24 content if the agent gives the custodian:

1 1. A written request for disclosure in physical or electronic
2 form;

3 2. An original or copy of the power of attorney expressly
4 granting the agent authority over the content of electronic
5 communications of the principal;

6 3. A certification by the agent, under penalty of perjury, that
7 the power of attorney is in effect; and

8 4. If requested by the custodian:

9 a. a number, username, address, or other unique
10 subscriber or account identifier assigned by the
11 custodian to identify the principal's account, or

12 b. evidence linking the account to the principal.

13 SECTION 10. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3110 of Title 58, unless there
15 is created a duplication in numbering, reads as follows:

16 Unless otherwise ordered by the court, directed by the
17 principal, or provided by a power of attorney, a custodian shall
18 disclose to an agent with specific authority over digital assets or
19 general authority to act on behalf of a principal, a catalog of
20 electronic communications sent or received by the principal and
21 digital assets, other than the content of electronic communications,
22 of the principal if the agent gives the custodian:

23 1. A written request for disclosure in physical or electronic
24 form;

1 2. An original or a copy of the power of attorney that gives
2 the agent specific authority over digital assets or general
3 authority to act on behalf of the principal;

4 3. A certification by the agent, under penalty of perjury, that
5 the power of attorney is in effect; and

6 4. If requested by the custodian:

7 a. a number, username, address, or other unique
8 subscriber or account identifier assigned by the
9 custodian to identify the principal's account, or

10 b. evidence linking the account to the principal.

11 SECTION 11. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3111 of Title 58, unless there
13 is created a duplication in numbering, reads as follows:

14 Unless otherwise ordered by the court or provided in a trust, a
15 custodian shall disclose to a trustee that is an original user of an
16 account any digital asset of the account held in trust, including a
17 catalog of electronic communications of the trustee and the content
18 of electronic communications.

19 SECTION 12. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 3112 of Title 58, unless there
21 is created a duplication in numbering, reads as follows:

22 Unless otherwise ordered by the court, directed by the user, or
23 provided in a trust, a custodian shall disclose to a trustee that is
24 not an original user of an account the content of an electronic

1 communication sent or received by an original or successor user and
2 carried, maintained, processed, received, or stored by the custodian
3 in the account of the trust if the trustee gives the custodian:

4 1. A written request for disclosure in physical or electronic
5 form;

6 2. A certified copy of the trust instrument that includes
7 consent to disclosure of the content of electronic communications to
8 the trustee;

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

12 4. If requested by the custodian:

13 a. a number, username, address, or other unique
14 subscriber or account identifier assigned by the
15 custodian to identify the trust's account, or

16 b. evidence linking the account to the trust.

17 SECTION 13. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 3113 of Title 58, unless there
19 is created a duplication in numbering, reads as follows:

20 Unless otherwise ordered by the court, directed by the user, or
21 provided in a trust, a custodian shall disclose, to a trustee that
22 is not an original user of an account, a catalog of electronic
23 communications sent or received by an original or successor user and
24 stored, carried, or maintained by the custodian in an account of the

1 trust and any digital assets, other than the content of electronic
2 communications, in which the trust has a right or interest if the
3 trustee gives the custodian:

4 1. A written request for disclosure in physical or electronic
5 form;

6 2. A certified copy of the trust instrument;

7 3. A certification by the trustee, under penalty of perjury,
8 that the trust exists and the trustee is a currently acting trustee
9 of the trust; and

10 4. If requested by the custodian:

11 a. a number, username, address, or other unique
12 subscriber or account identifier assigned by the
13 custodian to identify the trust's account, or

14 b. evidence linking the account to the trust.

15 SECTION 14. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3114 of Title 58, unless there
17 is created a duplication in numbering, reads as follows:

18 A. After an opportunity for a hearing under Section 3-112 of
19 Title 30 of the Oklahoma Statutes, the court may grant a guardian
20 access to the digital assets of a protected person.

21 B. Unless otherwise ordered by the court or directed by the
22 user, a custodian shall disclose to a guardian the catalog of
23 electronic communications sent or received by a protected person and
24 any digital assets, other than the content of electronic

1 communications, in which the protected person has a right or
2 interest if the guardian gives the custodian:

3 1. A written request for disclosure in physical or electronic
4 form;

5 2. A certified copy of the court order that gives the guardian
6 authority over the digital assets of the protected person; and

7 3. If requested by the custodian:

8 a. a number, username, address, or other unique
9 subscriber or account identifier assigned by the
10 custodian to identify the account of the protected
11 person, or

12 b. evidence linking the account to the protected person.

13 C. A guardian with general authority to manage the assets of a
14 protected person may request a custodian of the digital assets of
15 the protected person to suspend or terminate an account of the
16 protected person for good cause. A request made under this section
17 must be accompanied by a certified copy of the court order giving
18 the guardian authority over the protected person's property.

19 SECTION 15. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 3115 of Title 58, unless there
21 is created a duplication in numbering, reads as follows:

22 A. The legal duties imposed on a fiduciary charged with
23 managing tangible property apply to the management of digital
24 assets, including:

- 1 1. The duty of care;
- 2 2. The duty of loyalty; and
- 3 3. The duty of confidentiality.

4 B. A fiduciary's or designated recipient's authority with
5 respect to a digital asset of a user:

6 1. Except as otherwise provided in Section 4 of this act, is
7 subject to the applicable terms of service;

8 2. Is subject to other applicable law, including copyright law;

9 3. In the case of a fiduciary, is limited by the scope of the
10 fiduciary's duties; and

11 4. May not be used to impersonate the user.

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

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

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

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

1 2. Is an authorized user for the purpose of computer fraud and
2 unauthorized computer access laws.

3 F. A custodian may disclose information in an account to a
4 fiduciary of the user when the information is required to terminate
5 an account used to access digital assets licensed to the user.

6 G. A fiduciary of a user may request a custodian to terminate
7 the user's account. A request for termination must be in writing,
8 in either physical or electronic form, and accompanied by:

9 1. If the user is deceased, a certified copy of the death
10 certificate of the user;

11 2. A certified copy of the letter of appointment of the
12 representative, court order, power of attorney, or trust giving the
13 fiduciary authority over the account; and

14 3. If requested by the custodian:

15 a. a number, username, address, or other unique
16 subscriber or account identifier assigned by the
17 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 the user had a specific
20 account with the custodian, identifiable by the
21 information specified in subparagraph a of paragraph 3
22 of subsection G of this section.

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1 SECTION 16. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3116 of Title 58, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Not later than sixty (60) days after receipt of the
5 information required under Sections 7 through 15 of this act, a
6 custodian shall comply with a request under this act from a
7 fiduciary or designated recipient to disclose digital assets or
8 terminate an account. If the custodian fails to comply, the
9 fiduciary or designated recipient may apply to the court for an
10 order directing compliance.

11 B. An order under subsection A of this section directing
12 compliance must contain a finding that compliance is not in
13 violation of 18 U.S.C., Section 2702.

14 C. A custodian may notify the user that a request for
15 disclosure or to terminate an account was made under this act.

16 D. A custodian may deny a request under this act from a
17 fiduciary or designated recipient for disclosure of digital assets
18 or to terminate an account if the custodian is aware of any lawful
19 access to the account following the receipt of the fiduciary's
20 request.

21 E. This act does not limit a custodian's ability to obtain or
22 require a fiduciary or designated recipient requesting disclosure or
23 termination under this act to obtain a court order which:

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1 1. Specifies that an account belongs to the protected person or
2 principal;

3 2. Specifies that there is sufficient consent from the
4 protected person or principal to support the requested disclosure;
5 and

6 3. Contains a finding required by law other than this act.

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

10 SECTION 17. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3117 of Title 58, unless there
12 is created a duplication in numbering, reads as follows:

13 In applying and construing this uniform act, consideration must
14 be given to the need to promote uniformity of the law with respect
15 to its subject matter among states that enact it.

16 SECTION 18. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 3118 of Title 58, unless there
18 is created a duplication in numbering, reads as follows:

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

1 SECTION 19. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3119 of Title 58, unless there
3 is created a duplication in numbering, reads as follows:

4 If any provision of this act or its application to any person or
5 circumstance is held invalid, the invalidity does not affect other
6 provisions or applications of this act which can be given effect
7 without the invalid provision or application, and to this end the
8 provisions of this act are severable.

9 SECTION 20. This act shall become effective November 1, 2024.

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11 COMMITTEE REPORT BY: COMMITTEE ON BANKING, FINANCIAL SERVICES AND
12 PENSIONS, dated 02/20/2024 - DO PASS, As Amended.

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