

By Senator Hukill

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1                                   A bill to be entitled  
2       An act relating to digital assets; providing a  
3       directive to the Division of Law Revision and  
4       Information; creating s. 740.001, F.S.; providing a  
5       short title; creating s. 740.101, F.S.; defining  
6       terms; creating s. 740.201, F.S.; authorizing a  
7       personal representative to have access to specified  
8       digital assets of a decedent under certain  
9       circumstances; creating s. 740.301, F.S.; authorizing  
10      a guardian to have access to specified digital assets  
11      of a ward under certain circumstances; creating s.  
12      740.401, F.S.; authorizing an agent to have access to  
13      specified digital assets of a principal under certain  
14      circumstances; creating s. 740.501, F.S.; authorizing  
15      a trustee to have access to specified digital assets  
16      held in trust under certain circumstances; creating s.  
17      740.601, F.S.; providing the rights of a fiduciary  
18      relating to digital assets; providing that specified  
19      provisions in a terms-of-service agreement are  
20      unenforceable or void as against the strong public  
21      policy of this state under certain circumstances;  
22      creating s. 740.701, F.S.; providing requirements for  
23      compliance for a custodian, a personal representative,  
24      a guardian, an agent, a trustee, or another person  
25      that is entitled to receive and collect specified  
26      digital assets; providing for damages if a demand for  
27      the trust instrument is not made in good faith by a  
28      custodian; providing applicability; creating s.  
29      740.801, F.S.; providing immunity for a custodian and

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30 its officers, employees, and agents for any action  
31 done in good faith and in compliance with ch. 740,  
32 F.S.; creating s. 740.901, F.S.; clarifying the  
33 relationship of ch. 740, F.S., to the Electronic  
34 Signatures in Global and National Commerce Act;  
35 creating s. 740.911, F.S.; providing applicability;  
36 providing an effective date.

37  
38 Be It Enacted by the Legislature of the State of Florida:

39  
40 Section 1. The Division of Law Revision and Information is  
41 directed to create chapter 740, Florida Statutes, consisting of  
42 sections 740.001-740.911, Florida Statutes, to be entitled  
43 "Fiduciary Access to Digital Assets."

44 Section 2. Section 740.001, Florida Statutes, is created to  
45 read:

46 740.001 Short title.—This chapter may be cited as the  
47 "Florida Fiduciary Access to Digital Assets Act."

48 Section 3. Section 740.101, Florida Statutes, is created to  
49 read:

50 740.101 Definitions.—As used in this chapter, the term:

51 (1) "Account holder" means a person that has entered into a  
52 terms-of-service agreement with a custodian and a fiduciary for  
53 such person. The term includes a deceased individual who entered  
54 into the agreement during the individual's lifetime.

55 (2) "Agent" means a person that is granted authority to act  
56 for a principal under a durable or nondurable power of attorney,  
57 whether denominated an agent, an attorney in fact, or otherwise.  
58 The term includes an original agent, a co-agent, and a successor

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59 agent.

60 (3) "Carry" means to engage in the transmission of  
61 electronic communications.

62 (4) "Catalogue of electronic communications" means  
63 information that identifies each person with which an account  
64 holder has had an electronic communication, the time and date of  
65 the communication, and the electronic address of the person.

66 (5) "Content of an electronic communication" means  
67 information not readily accessible to the public concerning the  
68 substance or meaning of an electronic communication.

69 (6) "Court" means a circuit court of this state.

70 (7) "Custodian" means a person that carries, maintains,  
71 processes, receives, or stores a digital asset of an account  
72 holder.

73 (8) "Digital asset" means an electronic record. The term  
74 does not include an underlying asset or liability to which an  
75 electronic record refers, unless the asset or liability is  
76 itself an electronic record.

77 (9) "Electronic" means technology having electrical,  
78 digital, magnetic, wireless, optical, electromagnetic, or  
79 similar capabilities.

80 (10) "Electronic communication" means a digital asset  
81 stored by an electronic communication service or carried or  
82 maintained by a remote computing service. The term includes the  
83 catalogue of electronic communications and the content of an  
84 electronic communication.

85 (11) "Electronic communication service" means a custodian  
86 that provides to the public the ability to send or receive an  
87 electronic communication.

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88       (12) "Fiduciary" means a person that is an original,  
89 additional, or successor personal representative, guardian,  
90 agent, or trustee.

91       (13) "Guardian" means a person that has been appointed by  
92 the court as guardian of the property of a minor or  
93 incapacitated individual. The term includes a person that has  
94 been appointed by the court as an emergency temporary guardian  
95 of the property.

96       (14) "Information" means data, text, images, videos,  
97 sounds, codes, computer programs, software, databases, or the  
98 like.

99       (15) "Person" means an individual, estate, trust, business  
100 or nonprofit entity, public corporation, government or  
101 governmental subdivision, agency, or instrumentality, or other  
102 legal entity.

103       (16) "Personal representative" means the fiduciary  
104 appointed by the court to administer the estate of a deceased  
105 individual pursuant to letters of administration or an order  
106 appointing a curator or administrator ad litem for the estate.

107       (17) "Power of attorney" means a record that grants an  
108 agent authority to act in the place of a principal pursuant to  
109 chapter 709.

110       (18) "Principal" means an individual who grants authority  
111 to an agent in a power of attorney.

112       (19) "Record" means information that is inscribed on a  
113 tangible medium or that is stored in an electronic or other  
114 medium and is retrievable in perceivable form.

115       (20) "Remote computing service" means a custodian that  
116 provides to the public computer processing services or the

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117 storage of digital assets by means of an electronic  
118 communications system as defined in 18 U.S.C. s. 2510(14).

119 (21) "Terms-of-service agreement" means an agreement that  
120 controls the relationship between an account holder and a  
121 custodian.

122 (22) "Trustee" means a fiduciary that holds legal title to  
123 a digital asset pursuant to an agreement, declaration, or trust  
124 instrument that creates a beneficial interest in the settlor or  
125 others.

126 (23) "Ward" means an individual for whom a guardian has  
127 been appointed.

128 (24) "Will" means an instrument admitted to probate,  
129 including a codicil, executed by an individual in the manner  
130 prescribed by the Florida Probate Code, which disposes of the  
131 individual's property on or after his or her death. The term  
132 includes an instrument that merely appoints a personal  
133 representative or revokes or revises another will.

134 Section 4. Section 740.201, Florida Statutes, is created to  
135 read:

136 740.201 Authority of personal representative over digital  
137 assets of a decedent.—Subject to s. 740.601(2) and unless  
138 otherwise provided by the court or the will of a decedent, a  
139 personal representative has the right to access:

140 (1) The content of an electronic communication sent or  
141 received by the decedent if the electronic communication service  
142 or remote computing service is authorized to disclose the  
143 content under the Electronic Communications Privacy Act, 18  
144 U.S.C. s. 2702(b);

145 (2) The catalogue of electronic communications sent or

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146 received by the decedent; and

147 (3) Any other digital asset in which the decedent had a  
148 right or interest at his or her death.

149 Section 5. Section 740.301, Florida Statutes, is created to  
150 read:

151 740.301 Authority of guardian over digital assets of a  
152 ward.—The court, after an opportunity for hearing, may grant a  
153 guardian the right to access:

154 (1) The content of an electronic communication sent or  
155 received by the ward if the electronic communication service or  
156 remote computing service is authorized to disclose the content  
157 under the Electronic Communications Privacy Act, 18 U.S.C. s.  
158 2702(b);

159 (2) The catalogue of electronic communications sent or  
160 received by the ward; and

161 (3) Any other digital asset in which the ward has a right  
162 or interest.

163 Section 6. Section 740.401, Florida Statutes, is created to  
164 read:

165 740.401 Control by agent of digital assets.—

166 (1) To the extent a power of attorney expressly grants  
167 authority to an agent over the content of an electronic  
168 communication of the principal, the agent has the right to  
169 access the content of an electronic communication sent or  
170 received by the principal if the electronic communication  
171 service or remote computing service is authorized to disclose  
172 the content under the Electronic Communications Privacy Act, 18  
173 U.S.C. s. 2702(b).

174 (2) Except as provided in subsection (1) and unless

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175 otherwise provided by a power of attorney or a court order, an  
176 agent has the right to access:

177 (a) The catalogue of electronic communications sent or  
178 received by the principal; and

179 (b) Any other digital asset in which the principal has a  
180 right or interest.

181 Section 7. Section 740.501, Florida Statutes, is created to  
182 read:

183 740.501 Control by trustee of digital assets.—Subject to s.  
184 740.601(2) and unless otherwise provided by the court or the  
185 terms of a trust, a trustee or a successor of a trustee that is:

186 (1) An original account holder has the right to access each  
187 digital asset held in trust, including the catalogue of  
188 electronic communications sent or received and the content of an  
189 electronic communication; or

190 (2) Not an original account holder has the right to access  
191 the following digital assets held in trust:

192 (a) The catalogue of electronic communications sent or  
193 received by the account holder;

194 (b) The content of an electronic communication sent or  
195 received by the account holder if the electronic communication  
196 service or remote computing service is authorized to disclose  
197 the content under the Electronic Communications Privacy Act, 18  
198 U.S.C. s. 2702(b); and

199 (c) Any other digital asset in which the account holder or  
200 any successor account holder has a right or interest.

201 Section 8. Section 740.601, Florida Statutes, is created to  
202 read:

203 740.601 Fiduciary access and authority.—

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204       (1) A fiduciary that is an account holder or has the right  
205 under this chapter to access a digital asset of an account  
206 holder:

207       (a) May take any action concerning the digital asset to the  
208 extent of the account holder's authority and the fiduciary's  
209 powers under the laws of this state, subject to the terms-of-  
210 service agreement and copyright or other applicable law;

211       (b) Is deemed to have the lawful consent of the account  
212 holder for the custodian to divulge the content of an electronic  
213 communication to the fiduciary under applicable electronic  
214 privacy laws; and

215       (c) Is an authorized user under applicable computer fraud  
216 and unauthorized access laws.

217       (2) If a provision in a terms-of-service agreement limits a  
218 fiduciary's access to a digital asset of the account holder, the  
219 provision is void as against the strong public policy of this  
220 state unless the account holder agreed to the provision after  
221 July 1, 2015, by an affirmative act separate from the account  
222 holder's assent to other provisions of the terms-of-service  
223 agreement.

224       (3) A choice-of-law provision in a terms-of-service  
225 agreement is unenforceable against a fiduciary acting under this  
226 chapter to the extent the provision designates a law that  
227 enforces a limitation on a fiduciary's access to a digital asset  
228 which is void under subsection (2).

229       (4) Except as provided in subsection (2), a fiduciary's  
230 access to a digital asset under this chapter does not violate a  
231 terms-of-service agreement, notwithstanding a provision of the  
232 agreement, which limits third-party access or requires notice of



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233 change in the account holder's status.

234 (5) As to tangible personal property capable of receiving,  
235 storing, processing, or sending a digital asset, a fiduciary  
236 with authority over the property of a decedent, ward, principal,  
237 or settlor has the right to access the property and any digital  
238 asset stored in it and is an authorized user for purposes of any  
239 applicable computer fraud and unauthorized access laws,  
240 including the laws of this state.

241 Section 9. Section 740.701, Florida Statutes, is created to  
242 read:

243 740.701 Compliance.—

244 (1) If a fiduciary that has a right under this chapter to  
245 access a digital asset of an account holder complies with  
246 subsection (2), the custodian shall comply with the fiduciary's  
247 request for a record for:

248 (a) Access to the digital asset;

249 (b) Control of the digital asset; and

250 (c) A copy of the digital asset to the extent authorized by  
251 copyright law.

252 (2) If a request under subsection (1) is made by:

253 (a) A personal representative who has the right of access  
254 under s. 740.201, the request must be accompanied by a certified  
255 copy of the letters of administration of the personal  
256 representative, an order authorizing a curator or administrator  
257 ad litem, or other court order;

258 (b) A guardian that has the right of access under s.  
259 740.301, the request must be accompanied by a certified copy of  
260 letters of plenary guardianship of the property or a court order  
261 that gives the guardian authority over the digital asset;

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262       (c) An agent that has the right of access under s. 740.401,  
263 the request must be accompanied by an original or a copy of the  
264 power of attorney which authorizes the agent to exercise  
265 authority over the digital asset and a certification of the  
266 agent, under penalty of perjury, that the power of attorney is  
267 in effect;

268       (d) A trustee that has the right of access under s.  
269 740.501, the request must be accompanied by a certified copy of  
270 the trust instrument, or a certification of trust under s.  
271 736.1017, which authorizes the trustee to exercise authority  
272 over the digital asset; or

273       (e) A person that is entitled to receive and collect  
274 specified digital assets, the request must be accompanied by a  
275 certified copy of an order of summary administration issued  
276 pursuant to chapter 735.

277       (3) A custodian shall comply with a request made under  
278 subsection (1) not later than 60 days after receipt. If the  
279 custodian fails to comply, the fiduciary may apply to the court  
280 for an order directing compliance.

281       (4) A custodian that receives a certification of trust may  
282 require the trustee to provide copies of excerpts from the  
283 original trust instrument and later amendments which designate  
284 the trustee and confer on the trustee the power to act in the  
285 pending transaction.

286       (5) A custodian that acts in reliance on a certification of  
287 trust without knowledge that the representations contained in it  
288 are incorrect is not liable to any person for so acting and may  
289 assume without inquiry the existence of facts stated in the  
290 certification.

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291 (6) A custodian that enters into a transaction in good  
292 faith and in reliance on a certification of trust may enforce  
293 the transaction against the trust property as if the  
294 representations contained in the certification were correct.

295 (7) A custodian that demands the trust instrument in  
296 addition to a certification of trust or excerpts under  
297 subsection (4) is liable for damages if the court determines  
298 that the custodian did not act in good faith in demanding the  
299 trust instrument.

300 (8) This section does not limit the right of a person to  
301 obtain a copy of a trust instrument in a judicial proceeding  
302 concerning the trust.

303 Section 10. Section 740.801, Florida Statutes, is created  
304 to read:

305 740.801 Immunity.—A custodian and its officers, employees,  
306 and agents are immune from liability for any action done in good  
307 faith in compliance with this chapter.

308 Section 11. Section 740.901, Florida Statutes, is created  
309 to read:

310 740.901 Relation to Electronic Signatures in Global and  
311 National Commerce Act.—This chapter modifies, limits, or  
312 supersedes the Electronic Signatures in Global and National  
313 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,  
314 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),  
315 or authorize electronic delivery of the notices described in s.  
316 103(b) of that act, 15 U.S.C. s. 7003(b).

317 Section 12. Section 740.911, Florida Statutes, is created  
318 to read:

319 740.911 Applicability.—

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320       (1) Subject to subsection (2), this chapter applies to:  
321       (a) An agent acting under a power of attorney executed  
322 before, on, or after July 1, 2015;  
323       (b) A personal representative acting for a decedent who  
324 died before, on, or after July 1, 2015;  
325       (c) A guardian appointed through a guardianship proceeding,  
326 whether pending in a court or commenced before, on, or after  
327 July 1, 2015; and  
328       (d) A trustee acting under a trust created before, on, or  
329 after July 1, 2015.  
330       (2) This chapter does not apply to a digital asset of an  
331 employer used by an employee in the ordinary course of the  
332 employer's business.  
333       Section 13. This act shall take effect July 1, 2015.