

By the Committee on Judiciary; and Senators Hukill, Joyner, and Latvala

590-01486-15

2015102c1

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 public policy of  
21      this state under certain circumstances; creating s.  
22      740.701, F.S.; providing requirements for compliance  
23      for a custodian, a personal representative, a  
24      guardian, an agent, a trustee, or another person that  
25      is entitled to receive and collect specified digital  
26      assets; providing for damages if a demand for the  
27      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

590-01486-15

2015102c1

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 ss. 740.001-740.911, Florida Statutes, to be entitled "Fiduciary  
43 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 or 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

590-01486-15

2015102c1

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 concerning the substance or meaning of the  
68 communication which:

69 (a) Has been sent or received by the account holder;

70 (b) Is in electronic storage by a custodian providing an  
71 electronic communication service to the public or is carried or  
72 maintained by a custodian providing a remote computing service  
73 to the public; and

74 (c) Is not readily accessible to the public.

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

76 (7) "Custodian" means a person that carries, maintains,  
77 processes, receives, or stores a digital asset of an account  
78 holder.

79 (8) "Digital asset" means an electronic record. The term  
80 does not include an underlying asset or liability to which an  
81 electronic record refers, unless the asset or liability is  
82 itself an electronic record.

83 (9) "Electronic" means technology having electrical,  
84 digital, magnetic, wireless, optical, electromagnetic, or  
85 similar capabilities.

86 (10) "Electronic communication" has the same meaning as  
87 provided in 18 U.S.C. s. 2510(12).

590-01486-15

2015102c1

88       (11) "Electronic communication service" means a custodian  
89 that provides to an account holder the ability to send or  
90 receive an electronic communication.

91       (12) "Fiduciary" means a person that is an original,  
92 additional, or successor personal representative, guardian,  
93 agent, or trustee.

94       (13) "Guardian" means a person who is appointed by the  
95 court as guardian of the property of a minor or an incapacitated  
96 individual. The term includes a person appointed by the court as  
97 an emergency temporary guardian of the property.

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

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

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

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

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

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

590-01486-15

2015102c1

117 (20) "Remote computing service" means a custodian that  
118 provides to an account holder computer processing services or  
119 the storage of digital assets by means of an electronic  
120 communications system as defined in 18 U.S.C. s. 2510(14).

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

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

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

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

136 Section 4. Section 740.201, Florida Statutes, is created to  
137 read:

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

142 (1) The content of an electronic communication that the  
143 custodian is permitted to disclose under the Electronic  
144 Communications Privacy Act, 18 U.S.C. s. 2702(b);

145 (2) The catalogue of electronic communications sent or

590-01486-15

2015102c1

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 that the  
155 custodian is permitted to disclose under the Electronic  
156 Communications Privacy Act, 18 U.S.C. s. 2702(b);

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

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

161 Section 6. Section 740.401, Florida Statutes, is created to  
162 read:

163 740.401 Control by agent of digital assets.—

164 (1) To the extent that a power of attorney expressly grants  
165 an agent authority over the content of an electronic  
166 communication of the principal, and subject to s. 740.601(2),  
167 the agent has the right to access the content of an electronic  
168 communication that the custodian is permitted to disclose under  
169 the Electronic Communications Privacy Act, 18 U.S.C. s. 2702(b).

170 (2) Except as provided in subsection (1) and unless  
171 otherwise provided by a power of attorney or a court order, an  
172 agent has the right to access:

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

590-01486-15

2015102c1

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

177 Section 7. Section 740.501, Florida Statutes, is created to  
178 read:

179 740.501 Control by trustee of digital assets.—Subject to s.  
180 740.601(2) and unless otherwise provided by the court or the  
181 terms of a trust:

182 (1) A trustee or a successor of a trustee who is an  
183 original account holder has the right to access each digital  
184 asset held in trust, including any catalogue of electronic  
185 communications sent or received and the content of an electronic  
186 communication; or

187 (2) A trustee or a successor of a trustee who is not an  
188 original account holder has the right to access the following  
189 digital assets held in trust:

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

192 (b) The content of an electronic communication that the  
193 custodian is permitted to disclose under the Electronic  
194 Communications Privacy Act, 18 U.S.C. s. 2702(b); and

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

197 Section 8. Section 740.601, Florida Statutes, is created to  
198 read:

199 740.601 Fiduciary access and authority.—

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

203 (a) May take any action concerning the digital asset to the

590-01486-15

2015102c1

204 extent of the account holder's authority and the fiduciary's  
205 powers under the laws of this state, subject to the terms-of-  
206 service agreement and copyright or other applicable law;

207 (b) Has, for the purpose of applicable electronic privacy  
208 laws, the lawful consent of the account holder for the custodian  
209 to divulge the content of an electronic communication to the  
210 fiduciary; and

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

213 (2) Unless an account holder, after June 30, 2015, agrees,  
214 by an affirmative act separate from the account holder's assent  
215 to other provisions of the terms of the service agreement, to a  
216 provision in the service agreement which limits a fiduciary's  
217 access to a digital asset of the account holder:

218 (a) The provision is void as against the public policy of  
219 this state; and

220 (b) The fiduciary's access under this chapter to a digital  
221 asset does not violate the terms of the service agreement even  
222 if the agreement requires notice of a change in the account  
223 holder's status.

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) As to tangible personal property capable of receiving,  
230 storing, processing, or sending a digital asset, a fiduciary  
231 with authority over the property of a decedent, ward, principal,  
232 or settlor has the right to access the property and any digital



590-01486-15

2015102c1

233 asset stored in it and is an authorized user for purposes of any  
234 applicable computer fraud and unauthorized access laws,  
235 including the laws of this state.

236 Section 9. Section 740.701, Florida Statutes, is created to  
237 read:

238 740.701 Compliance.—

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

243 (a) Access to the digital asset;

244 (b) Control of the digital asset; and

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

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

248 (a) A personal representative who has the right of access  
249 under s. 740.201, the request must be accompanied by a certified  
250 copy of the letters of administration of the personal  
251 representative, an order authorizing a curator or administrator  
252 ad litem, or other court order;

253 (b) A guardian that has the right of access under s.  
254 740.301, the request must be accompanied by a certified copy of  
255 letters of plenary guardianship of the property or a court order  
256 that gives the guardian authority over the digital asset;

257 (c) An agent that has the right of access under s. 740.401,  
258 the request must be accompanied by an original or a copy of the  
259 power of attorney which authorizes the agent to exercise  
260 authority over the digital asset and a certification of the  
261 agent, under penalty of perjury, that the power of attorney is

590-01486-15

2015102c1

262 in effect;

263 (d) A trustee that has the right of access under s.  
264 740.501, the request must be accompanied by a certified copy of  
265 the trust instrument, or a certification of trust under s.  
266 736.1017, which authorizes the trustee to exercise authority  
267 over the digital asset; or

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

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

276 (4) A custodian that receives a certification of trust may  
277 require the trustee to provide copies of excerpts from the  
278 original trust instrument and later amendments which designate  
279 the trustee and confer on the trustee the power to act in the  
280 pending transaction.

281 (5) A custodian that acts in reliance on a certification of  
282 trust without knowledge that the representations contained in it  
283 are incorrect is not liable to any person for so acting and may  
284 assume without inquiry the existence of facts stated in the  
285 certification.

286 (6) A custodian that enters into a transaction in good  
287 faith and in reliance on a certification of trust may enforce  
288 the transaction against the trust property as if the  
289 representations contained in the certification were correct.

290 (7) A custodian that demands the trust instrument in

590-01486-15

2015102c1

291 addition to a certification of trust or excerpts under  
292 subsection (4) is liable for damages if the court determines  
293 that the custodian did not act in good faith in demanding the  
294 trust instrument.

295 (8) This section does not limit the right of a person to  
296 obtain a copy of a trust instrument in a judicial proceeding  
297 concerning the trust.

298 Section 10. Section 740.801, Florida Statutes, is created  
299 to read:

300 740.801 Immunity.—A custodian and its officers, employees,  
301 and agents are immune from liability for any action done in good  
302 faith in compliance with this chapter.

303 Section 11. Section 740.901, Florida Statutes, is created  
304 to read:

305 740.901 Relation to Electronic Signatures in Global and  
306 National Commerce Act.—This chapter modifies, limits, or  
307 supersedes the Electronic Signatures in Global and National  
308 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,  
309 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),  
310 or authorize electronic delivery of the notices described in s.  
311 103(b) of that act, 15 U.S.C. s. 7003(b).

312 Section 12. Section 740.911, Florida Statutes, is created  
313 to read:

314 740.911 Applicability.—

315 (1) Subject to subsection (2), this chapter applies to:

316 (a) An agent acting under a power of attorney executed  
317 before, on, or after July 1, 2015;

318 (b) A personal representative acting for a decedent who  
319 died before, on, or after July 1, 2015;

590-01486-15

2015102c1

320       (c) A guardian appointed through a guardianship proceeding,  
321 whether pending in a court or commenced before, on, or after  
322 July 1, 2015; and

323       (d) A trustee acting under a trust created before, on, or  
324 after July 1, 2015.

325       (2) This chapter does not apply to a digital asset of an  
326 employer used by an employee in the ordinary course of the  
327 employer's business.

328       Section 13. This act shall take effect July 1, 2015.