

By the Committees on Rules; and Judiciary; and 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. 740.002, F.S.; defining
6 terms; creating s. 740.003, F.S.; authorizing a user
7 to use an online tool to allow a custodian to disclose
8 to a designated recipient or to prohibit a custodian
9 from disclosing digital assets under certain
10 circumstances; providing that a specified user's
11 direction overrides a contrary provision in a terms-
12 of-service agreement under certain circumstances;
13 creating s. 740.004, F.S.; providing construction;
14 authorizing the modification of a fiduciary's or
15 designated recipient's access to digital assets under
16 certain circumstances; creating s. 740.005, F.S.;
17 providing procedures for the disclosure of digital
18 assets; creating s. 740.006, F.S.; requiring a
19 custodian to disclose the content of electronic
20 communications of a deceased user under certain
21 circumstances; creating s. 740.007, F.S.; requiring a
22 custodian to disclose other digital assets of a
23 deceased user under certain circumstances; creating s.
24 740.008, F.S.; requiring a custodian to disclose the
25 content of electronic communications of a principal
26 under certain circumstances; creating s. 740.009,
27 F.S.; requiring a custodian to disclose other digital
28 assets of a principal under certain circumstances;
29 creating s. 740.01, F.S.; requiring a custodian to
30 disclose to a trustee who is the original user the
31 digital assets held in trust under certain
32 circumstances; creating s. 740.02, F.S.; requiring a

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33 custodian to disclose to a trustee who is not the
34 original user the content of electronic communications
35 held in trust under certain circumstances; creating s.
36 740.03, F.S.; requiring a custodian to disclose to a
37 trustee who is not the original user other digital
38 assets under certain circumstances; creating s.
39 740.04, F.S.; authorizing the court to grant a
40 guardian the right to access a ward's digital assets
41 under certain circumstances; requiring a custodian to
42 disclose to a guardian a specified catalog of
43 electronic communications and specified digital assets
44 of a ward under certain circumstances; creating s.
45 740.05, F.S.; imposing fiduciary duties; providing for
46 the rights and responsibilities of certain
47 fiduciaries; creating s. 740.06, F.S.; requiring
48 compliance of a custodian; providing construction;
49 providing for immunity from liability for a custodian
50 and its officers, employees, and agents acting in good
51 faith in complying with their duties; creating s.
52 740.07, F.S.; providing construction; creating s.
53 740.08, F.S.; providing applicability; creating s.
54 740.09, F.S.; providing severability; providing an
55 effective date.

56
57 Be It Enacted by the Legislature of the State of Florida:

58
59 Section 1. The Division of Law Revision and Information is
60 directed to create chapter 740, Florida Statutes, consisting of
61 ss. 740.001-740.09, Florida Statutes, to be entitled "Fiduciary

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62 Access to Digital Assets."

63 Section 2. Section 740.001, Florida Statutes, is created to
64 read:

65 740.001 Short title.—This chapter may be cited as the
66 "Florida Fiduciary Access to Digital Assets Act."

67 Section 3. Section 740.002, Florida Statutes, is created to
68 read:

69 740.002 Definitions.—As used in this chapter, the term:

70 (1) "Account" means an arrangement under a terms-of-service
71 agreement in which the custodian carries, maintains, processes,
72 receives, or stores a digital asset of the user or provides
73 goods or services to the user.

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

79 (3) "Carries" means to engage in the transmission of
80 electronic communications.

81 (4) "Catalog of electronic communications" means
82 information that identifies each person with which a user has
83 had an electronic communication, the time and date of the
84 communication, and the electronic address of the person.

85 (5) "Content of an electronic communication" means
86 information concerning the substance or meaning of the
87 communication which:

88 (a) Has been sent or received by a user;

89 (b) Is in electronic storage by a custodian providing an
90 electronic communication service to the public or is carried or

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91 maintained by a custodian providing a remote computing service
92 to the public; and

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

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

95 (7) "Custodian" means a person that carries, maintains,
96 processes, receives, or stores a digital asset of a user.

97 (8) "Designated recipient" means a person chosen by a user
98 through an online tool to administer digital assets of the user.

99 (9) "Digital asset" means an electronic record in which an
100 individual has a right or interest. The term does not include an
101 underlying asset or liability unless the asset or liability is
102 itself an electronic record.

103 (10) "Electronic" means relating to technology having
104 electrical, digital, magnetic, wireless, optical,
105 electromagnetic, or similar capabilities.

106 (11) "Electronic communication" has the same meaning as
107 provided in 18 U.S.C. s. 2510(12).

108 (12) "Electronic communication service" means a custodian
109 that provides to a user the ability to send or receive an
110 electronic communication.

111 (13) "Fiduciary" means an original, additional, or
112 successor personal representative, guardian, agent, or trustee.

113 (14) "Guardian" means a person who is appointed by the
114 court as guardian of the property of a minor or an incapacitated
115 individual. The term includes an original guardian, a co-
116 guardian, and a successor guardian, as well as a person
117 appointed by the court as an emergency temporary guardian of the
118 property.

119 (15) "Information" means data, text, images, videos,

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120 sounds, codes, computer programs, software, databases, or the
121 like.

122 (16) "Online tool" means an electronic service provided by
123 a custodian which allows the user, in an agreement distinct from
124 the terms-of-service agreement between the custodian and user,
125 to provide directions for disclosure or nondisclosure of digital
126 assets to a third person.

127 (17) "Person" means an individual, estate, trust, business
128 or nonprofit entity, public corporation, government or
129 governmental subdivision, agency, or instrumentality, or other
130 legal entity.

131 (18) "Personal representative" means the fiduciary
132 appointed by the court to administer the estate of a deceased
133 individual pursuant to letters of administration or an order
134 appointing a curator or administrator ad litem for the estate.
135 The term includes an original personal representative, a
136 copersonal representative, and a successor personal
137 representative, as well as a person who is entitled to receive
138 and collect a deceased individual's property pursuant to an
139 order of summary administration issued pursuant to chapter 735.

140 (19) "Power of attorney" means a record that grants an
141 agent authority to act in the place of a principal pursuant to
142 chapter 709.

143 (20) "Principal" means an individual who grants authority
144 to an agent in a power of attorney.

145 (21) "Record" means information that is inscribed on a
146 tangible medium or that is stored in an electronic or other
147 medium and is retrievable in perceivable form.

148 (22) "Remote computing service" means a custodian that

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149 provides to a user computer processing services or the storage
150 of digital assets by means of an electronic communications
151 system as defined in 18 U.S.C. s. 2510(14).

152 (23) "Terms-of-service agreement" means an agreement that
153 controls the relationship between a user and a custodian.

154 (24) "Trustee" means a fiduciary that holds legal title to
155 property under an agreement, declaration, or trust instrument
156 that creates a beneficial interest in the settlor or other
157 persons. The term includes an original trustee, a cotrustee, and
158 a successor trustee.

159 (25) "User" means a person that has an account with a
160 custodian.

161 (26) "Ward" means an individual for whom a guardian has
162 been appointed.

163 (27) "Will" means an instrument admitted to probate,
164 including a codicil, executed by an individual in the manner
165 prescribed by the Florida Probate Code, which disposes of the
166 individual's property on or after his or her death. The term
167 includes an instrument that merely appoints a personal
168 representative or revokes or revises another will.

169 Section 4. Section 740.003, Florida Statutes, is created to
170 read:

171 740.003 User direction for disclosure of digital assets.—

172 (1) A user may use an online tool to direct the custodian
173 to disclose to a designated recipient or not to disclose some or
174 all of the user's digital assets, including the content of
175 electronic communications. If the online tool allows the user to
176 modify or delete a direction at all times, a direction regarding
177 disclosure using an online tool overrides a contrary direction

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178 by the user in a will, trust, power of attorney, or other
179 record.

180 (2) If a user has not used an online tool to give direction
181 under subsection (1) or if the custodian has not provided an
182 online tool, the user may allow or prohibit disclosure to a
183 fiduciary of some or all of the user's digital assets, including
184 the content of electronic communications sent or received by the
185 user, in a will, trust, power of attorney, or other record.

186 (3) A user's direction under subsection (1) or subsection
187 (2) overrides a contrary provision in a terms-of-service
188 agreement that does not require the user to act affirmatively
189 and distinctly from the user's assent to the terms of service.

190 Section 5. Section 740.004, Florida Statutes, is created to
191 read:

192 740.004 Terms-of-service agreement preserved.-

193 (1) This chapter does not change or impair a right of a
194 custodian or a user under a terms-of-service agreement to access
195 and use the digital assets of the user.

196 (2) This chapter does not give a fiduciary or a designated
197 recipient any new or expanded rights other than those held by
198 the user for whom, or for whose estate or trust, the fiduciary
199 or designated recipient acts or represents.

200 (3) A fiduciary's or designated recipient's access to
201 digital assets may be modified or eliminated by a user, by
202 federal law, or by a terms-of-service agreement if the user has
203 not provided direction under s. 740.003.

204 Section 6. Section 740.005, Florida Statutes, is created to
205 read:

206 740.005 Procedure for disclosing digital assets.-

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207 (1) When disclosing the digital assets of a user under this
208 chapter, the custodian may, at its sole discretion:

209 (a) Grant a fiduciary or designated recipient full access
210 to the user's account;

211 (b) Grant a fiduciary or designated recipient partial
212 access to the user's account sufficient to perform the tasks
213 with which the fiduciary or designated recipient is charged; or

214 (c) Provide a fiduciary or designated recipient a copy in a
215 record of any digital asset that, on the date the custodian
216 received the request for disclosure, the user could have
217 accessed if the user were alive and had full capacity and access
218 to the account.

219 (2) A custodian may assess a reasonable administrative
220 charge for the cost of disclosing digital assets under this
221 chapter.

222 (3) A custodian is not required to disclose under this
223 chapter a digital asset deleted by a user.

224 (4) If a user directs or a fiduciary requests a custodian
225 to disclose under this chapter some, but not all, of the user's
226 digital assets to the fiduciary or a designated recipient, the
227 custodian is not required to disclose the assets if segregation
228 of the assets would impose an undue burden on the custodian. If
229 the custodian believes the direction or request imposes an undue
230 burden, the custodian or the fiduciary may seek an order from
231 the court to disclose:

232 (a) A subset limited by date of the user's digital assets;

233 (b) All of the user's digital assets to the fiduciary or
234 designated recipient, or to the court for review in chambers; or

235 (c) None of the user's digital assets.

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236 Section 7. Section 740.006, Florida Statutes, is created to
237 read:

238 740.006 Disclosure of content of electronic communications
239 of deceased user.—If a deceased user consented to or a court
240 directs the disclosure of the content of electronic
241 communications of the user, the custodian shall disclose to the
242 personal representative of the estate of the user the content of
243 an electronic communication sent or received by the user if the
244 personal representative gives to the custodian:

245 (1) A written request for disclosure which is in physical
246 or electronic form;

247 (2) A certified copy of the death certificate of the user;

248 (3) A certified copy of the letters of administration, the
249 order authorizing a curator or administrator ad litem, the order
250 of summary administration issued pursuant to chapter 735, or
251 other court order;

252 (4) Unless the user provided direction using an online
253 tool, a copy of the user's will, trust, power of attorney, or
254 other record evidencing the user's consent to disclosure of the
255 content of electronic communications; and

256 (5) If requested by the custodian:

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

260 (b) Evidence linking the account to the user; or

261 (c) A finding by the court that:

262 1. The user had a specific account with the custodian,
263 identifiable by information specified in paragraph (a);

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265 of the user would not violate 18 U.S.C. s. 2701 et seq., 47
266 U.S.C. s. 222, or other applicable law;

267 3. Unless the user provided direction using an online tool,
268 the user consented to disclosure of the content of electronic
269 communications; or

270 4. Disclosure of the content of electronic communications
271 of the user is reasonably necessary for the administration of
272 the estate.

273 Section 8. Section 740.007, Florida Statutes, is created to
274 read:

275 740.007 Disclosure of other digital assets of deceased
276 user.—Unless a user prohibited disclosure of digital assets or
277 the court directs otherwise, a custodian shall disclose to the
278 personal representative of the estate of a deceased user a
279 catalog of electronic communications sent or received by the
280 user and digital assets of the user, except the content of
281 electronic communications, if the personal representative gives
282 to the custodian:

283 (1) A written request for disclosure which is in physical
284 or electronic form;

285 (2) A certified copy of the death certificate of the user;

286 (3) A certified copy of the letters of administration, the
287 order authorizing a curator or administrator ad litem, the order
288 of summary administration issued pursuant to chapter 735, or
289 other court order; and

290 (4) If requested by the custodian:

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

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- 294 (b) Evidence linking the account to the user;
295 (c) An affidavit stating that disclosure of the user's
296 digital assets is reasonably necessary for the administration of
297 the estate; or
298 (d) An order of the court finding that:
299 1. The user had a specific account with the custodian,
300 identifiable by information specified in paragraph (a); or
301 2. Disclosure of the user's digital assets is reasonably
302 necessary for the administration of the estate.
- 303 Section 9. Section 740.008, Florida Statutes, is created to
304 read:
- 305 740.008 Disclosure of content of electronic communications
306 of principal.—To the extent a power of attorney expressly grants
307 an agent authority over the content of electronic communications
308 sent or received by the principal and unless directed otherwise
309 by the principal or the court, a custodian shall disclose to the
310 agent the content if the agent gives to the custodian:
- 311 (1) A written request for disclosure which is in physical
312 or electronic form;
313 (2) An original or copy of the power of attorney expressly
314 granting the agent authority over the content of electronic
315 communications of the principal;
316 (3) A certification by the agent, under penalty of perjury,
317 that the power of attorney is in effect; and
318 (4) If requested by the custodian:
319 (a) A number, username, address, or other unique subscriber
320 or account identifier assigned by the custodian to identify the
321 principal's account; or
322 (b) Evidence linking the account to the principal.

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323 Section 10. Section 740.009, Florida Statutes, is created
324 to read:

325 740.009 Disclosure of other digital assets of principal.—
326 Unless otherwise ordered by the court, directed by the
327 principal, or provided by a power of attorney, a custodian shall
328 disclose to an agent with specific authority over the digital
329 assets or with general authority to act on behalf of the
330 principal a catalog of electronic communications sent or
331 received by the principal, and digital assets of the principal,
332 except the content of electronic communications, if the agent
333 gives the custodian:

334 (1) A written request for disclosure which is in physical
335 or electronic form;

336 (2) An original or a copy of the power of attorney which
337 gives the agent specific authority over digital assets or
338 general authority to act on behalf of the principal;

339 (3) A certification by the agent, under penalty of perjury,
340 that the power of attorney is in effect; and

341 (4) If requested by the custodian:

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

345 (b) Evidence linking the account to the principal.

346 Section 11. Section 740.01, Florida Statutes, is created to
347 read:

348 740.01 Disclosure of digital assets held in trust when
349 trustee is the original user.—Unless otherwise ordered by the
350 court or provided in a trust, a custodian shall disclose to a
351 trustee that is an original user of an account any digital asset

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352 of the account held in trust, including a catalog of electronic
353 communications of the trustee and the content of electronic
354 communications.

355 Section 12. Section 740.02, Florida Statutes, is created to
356 read:

357 740.02 Disclosure of content of electronic communications
358 held in trust when trustee is not the original user.—Unless
359 otherwise ordered by the court, directed by the user, or
360 provided in a trust, a custodian shall disclose to a trustee
361 that is not an original user of an account the content of an
362 electronic communication sent or received by an original or
363 successor user and carried, maintained, processed, received, or
364 stored by the custodian in the account of the trust if the
365 trustee gives the custodian:

366 (1) A written request for disclosure which is in physical
367 or electronic form;

368 (2) A certified copy of the trust instrument, or a
369 certification of trust under s. 736.1017, which includes consent
370 to disclosure of the content of electronic communications to the
371 trustee;

372 (3) A certification by the trustee, under penalty of
373 perjury, that the trust exists and that the trustee is a
374 currently acting trustee of the trust; and

375 (4) If requested by the custodian:

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

379 (b) Evidence linking the account to the trust.

380 Section 13. Section 740.03, Florida Statutes, is created to

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381 read:

382 740.03 Disclosure of other digital assets held in trust
383 when trustee is not the original user.—Unless otherwise ordered
384 by the court, directed by the user, or provided in a trust, a
385 custodian shall disclose to a trustee that is not an original
386 user of an account, a catalog of electronic communications sent
387 or received by an original or successor user and stored,
388 carried, or maintained by the custodian in an account of the
389 trust and any digital assets in which the trust has a right or
390 interest, other than the content of electronic communications,
391 if the trustee gives the custodian:

392 (1) A written request for disclosure which is in physical
393 or electronic form;

394 (2) A certified copy of the trust instrument, or a
395 certification of trust under s. 736.1017;

396 (3) A certification by the trustee, under penalty of
397 perjury, that the trust exists and that the trustee is a
398 currently acting trustee of the trust; and

399 (4) If requested by the custodian:

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

403 (b) Evidence linking the account to the trust.

404 Section 14. Section 740.04, Florida Statutes, is created to
405 read:

406 740.04 Disclosure of digital assets to guardian of ward.—

407 (1) After an opportunity for a hearing under chapter 744,
408 the court may grant a guardian access to the digital assets of a
409 ward.

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410 (2) Unless otherwise ordered by the court or directed by
411 the user, a custodian shall disclose to a guardian the catalog
412 of electronic communications sent or received by the ward and
413 any digital assets in which the ward has a right or interest,
414 other than the content of electronic communications, if the
415 guardian gives the custodian:

416 (a) A written request for disclosure which is in physical
417 or electronic form;

418 (b) A certified copy of letters of plenary guardianship of
419 the property or the court order that gives the guardian
420 authority over the digital assets of the ward; and

421 (c) If requested by the custodian:

422 1. A number, username, address, or other unique subscriber
423 or account identifier assigned by the custodian to identify the
424 ward's account; or

425 2. Evidence linking the account to the ward.

426 (3) A guardian with general authority to manage the
427 property of a ward may request a custodian of the digital assets
428 of the ward to suspend or terminate an account of the ward for
429 good cause. A request made under this section must be
430 accompanied by a certified copy of the court order giving the
431 guardian authority over the ward's property.

432 Section 15. Section 740.05, Florida Statutes, is created to
433 read:

434 740.05 Fiduciary duty and authority.—

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

438 (a) The duty of care;

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- 439 (b) The duty of loyalty; and
440 (c) The duty of confidentiality.
441 (2) A fiduciary's or designated recipient's authority with
442 respect to a digital asset of a user:
443 (a) Except as otherwise provided in s. 740.003, is subject
444 to the applicable terms-of-service agreement;
445 (b) Is subject to other applicable law, including copyright
446 law;
447 (c) In the case of a fiduciary, is limited by the scope of
448 the fiduciary's duties; and
449 (d) May not be used to impersonate the user.
450 (3) A fiduciary with authority over the tangible personal
451 property of a decedent, ward, principal, or settlor has the
452 right to access any digital asset in which the decedent, ward,
453 principal, or settlor had or has a right or interest and that is
454 not held by a custodian or subject to a terms-of-service
455 agreement.
456 (4) A fiduciary acting within the scope of the fiduciary's
457 duties is an authorized user of the property of the decedent,
458 ward, principal, or settlor for the purpose of applicable
459 computer fraud and unauthorized computer access laws, including
460 under chapter 815.
461 (5) A fiduciary with authority over the tangible personal
462 property of a decedent, ward, principal, or settlor:
463 (a) Has the right to access the property and any digital
464 asset stored in it; and
465 (b) Is an authorized user for the purpose of computer fraud
466 and unauthorized computer access laws, including under chapter
467 815.

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468 (6) A custodian may disclose information in an account to a
469 fiduciary of the user when the information is required to
470 terminate an account used to access digital assets licensed to
471 the user.

472 (7) A fiduciary of a user may request a custodian to
473 terminate the user's account. A request for termination must be
474 in writing, in paper or electronic form, and accompanied by:

475 (a) If the user is deceased, a certified copy of the death
476 certificate of the user;

477 (b) A certified copy of the letters of administration; the
478 order authorizing a curator or administrator ad litem; the order
479 of summary administration issued pursuant to chapter 735; or the
480 court order, power of attorney, or trust giving the fiduciary
481 authority over the account; and

482 (c) If requested by the custodian:

483 1. A number, username, address, or other unique subscriber
484 or account identifier assigned by the custodian to identify the
485 user's account;

486 2. Evidence linking the account to the user; or

487 3. A finding by the court that the user had a specific
488 account with the custodian, identifiable by the information
489 specified in subparagraph 1.

490 Section 16. Section 740.06, Florida Statutes, is created to
491 read:

492 740.06 Custodian compliance and immunity.-

493 (1) Not later than 60 days after receipt of the information
494 required under ss. 740.006-740.04, a custodian shall comply with
495 a request under this chapter from a fiduciary or designated
496 recipient to disclose digital assets or terminate an account. If

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497 the custodian fails to comply, the fiduciary or designated
498 recipient may apply to the court for an order directing
499 compliance.

500 (2) An order under subsection (1) directing compliance must
501 contain a finding that compliance is not in violation of 18
502 U.S.C. s. 2702.

503 (3) A custodian may notify a user that a request for
504 disclosure or to terminate an account was made under this
505 chapter.

506 (4) A custodian may deny a request under this chapter from
507 a fiduciary or designated recipient for disclosure of digital
508 assets or to terminate an account if the custodian is aware of
509 any lawful access to the account following the receipt of the
510 fiduciary's request.

511 (5) This chapter does not limit a custodian's ability to
512 obtain or require a fiduciary or designated recipient requesting
513 disclosure or termination under this chapter to obtain a court
514 order that:

515 (a) Specifies that an account belongs to the ward or
516 principal;

517 (b) Specifies that there is sufficient consent from the
518 ward or principal to support the requested disclosure; and

519 (c) Contains a finding required by a law other than this
520 chapter.

521 (6) A custodian and its officers, employees, and agents are
522 immune from liability for an act or omission done in good faith
523 in compliance with this chapter.

524 Section 17. Section 740.07, Florida Statutes, is created to
525 read:

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526 740.07 Relation to Electronic Signatures in Global and
527 National Commerce Act.—This chapter modifies, limits, and
528 supersedes the Electronic Signatures in Global and National
529 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
530 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
531 or authorize electronic delivery of any of the notices described
532 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

533 Section 18. Section 740.08, Florida Statutes, is created to
534 read:

535 740.08 Applicability.—

536 (1) Subject to subsection (3), this chapter applies to:

537 (a) A fiduciary acting under a will, trust, or power of
538 attorney executed before, on, or after July 1, 2016;

539 (b) A personal representative acting for a decedent who
540 died before, on, or after July 1, 2016;

541 (c) A guardian appointed through a guardianship proceeding,
542 whether pending in a court or commenced before, on, or after
543 July 1, 2016; and

544 (d) A trustee acting under a trust created before, on, or
545 after July 1, 2016.

546 (2) This chapter applies to a custodian if the user resides
547 in this state or resided in this state at the time of the user's
548 death.

549 (3) This chapter does not apply to a digital asset of an
550 employer used by an employee in the ordinary course of the
551 employer's business.

552 Section 19. Section 740.09, Florida Statutes, is created to
553 read:

554 740.09 Severability.—If any provision of this chapter or

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555 its application to any person or circumstance is held invalid,
556 the invalidity does not affect other provisions or applications
557 of this chapter which can be given effect without the invalid
558 provision or application, and to this end the provisions of this
559 chapter are severable.

560 Section 20. This act shall take effect July 1, 2016.