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	or to prohibit a custodian from disclosing digital
9	assets under certain circumstances; providing that
10	specified user's direction overrides a contrary
11	provision in a terms-of-service agreement under
12	certain circumstances; creating s. 740.004, F.S.;
13	providing construction; authorizing the modification
14	of a fiduciary's assets under certain circumstances;
15	creating s. 740.005, F.S.; providing procedures for
16	the disclosure of digital assets; creating s. 740.006,
17	F.S.; requiring a custodian to disclose the content of
18	electronic communications of a deceased user under
19	certain circumstances; creating s. 740.007, F.S.;
20	requiring a custodian to disclose other digital assets
21	of a deceased user under certain circumstances;
22	creating s. 740.008, F.S.; requiring a custodian to
23	disclose the content of electronic communications of a
24	principal under certain circumstances; creating s.
25	740.009, F.S.; requiring a custodian to disclose other
26	digital assets of a principal under certain
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27 circumstances; creating s. 740.01, F.S.; requiring a 28 custodian to disclose to a trustee who is the original user the digital assets held in trust under certain 29 30 circumstances; creating s. 740.02, F.S.; requiring a 31 custodian to disclose to a trustee who is not the original user the content of electronic communications 32 held in trust under certain circumstances; creating s. 33 34 740.03, F.S.; requiring a custodian to disclose to a 35 trustee who is not the original user other digital assets under certain circumstances; creating s. 36 37 740.04, F.S.; authorizing the court to grant a 38 guardian the right to access a ward's digital assets 39 under certain circumstances; requiring a custodian to disclose to a guardian a specified catalog of 40 electronic communications and specified digital assets 41 42 of a ward under certain circumstances; creating s. 740.05, F.S.; imposing fiduciary duties; providing for 43 the rights and responsibilities of certain 44 45 fiduciaries; creating s. 740.06, F.S.; requiring 46 compliance of a custodian; providing construction; 47 providing for immunity from liability for a custodian and its officers, employees, and agents acting in good 48 faith in complying with their duties; creating s. 49 740.07, F.S.; providing construction; creating s. 50 51 740.08, F.S.; providing applicability; creating s. 52 740.09, F.S.; providing severability; providing an

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53	effective date.
54	
55	Be It Enacted by the Legislature of the State of Florida:
56	
57	Section 1. The Division of Law Revision and Information is
58	directed to create chapter 740, Florida Statutes, consisting of
59	ss. 740.001-740.09, Florida Statutes, to be entitled "Fiduciary
60	Access to Digital Assets."
61	Section 2. Section 740.001, Florida Statutes, is created
62	to read:
63	740.001 Short titleThis chapter may be cited as the
64	"Florida Fiduciary Access to Digital Assets Act."
65	Section 3. Section 740.002, Florida Statutes, is created
66	to read:
67	740.002 DefinitionsAs used in this chapter, the term:
68	(1) "Account" means an arrangement under a terms-of-
69	service agreement in which the custodian carries, maintains,
70	processes, receives, or stores a digital asset of the user or
71	provides goods or services to the user.
72	(2) "Agent" means a person that is granted authority to
73	act for a principal under a durable or nondurable power of
74	attorney, whether denominated an agent, an attorney in fact, or
75	otherwise. The term includes an original agent, a co-agent, and
76	a successor agent.
77	(3) "Carries" means to engage in the transmission of
78	electronic communications.
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79 "Catalog of electronic communications" means (4) information that identifies each person with which a user has 80 81 had an electronic communication, the time and date of the 82 communication, and the electronic address of the person. "Content of an electronic communication" means 83 (5) 84 information concerning the substance or meaning of the 85 communication which: (a) Has been sent or received by a user; 86 87 (b) Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or 88 89 maintained by a custodian providing a remote computing service 90 to the public; and (c) Is not readily accessible to the public. 91 "Court" means a circuit court of this state. 92 (6) 93 "Custodian" means a person that carries, maintains, (7) 94 processes, receives, or stores a digital asset of a user. 95 "Designated recipient" means a person chosen by a user (8) 96 through an online tool to administer digital assets of the user. 97 (9) "Digital asset" means an electronic record in which an 98 individual has a right or interest. The term does not include an 99 underlying asset or liability unless the asset or liability is 100 itself an electronic record. 101 "Electronic" means relating to technology having (10)102 electrical, digital, magnetic, wireless, optical, 103 electromagnetic, or similar capabilities. 104 (11)"Electronic communication" has the same meaning as

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105	provided in 18 U.S.C. s. 2510(12).
106	(12) "Electronic communication service" means a custodian
107	that provides to a user the ability to send or receive an
108	electronic communication.
109	(13) "Fiduciary" means an original, additional, or
110	successor personal representative, guardian, agent, or trustee.
111	(14) "Guardian" means a person who is appointed by the
112	court as guardian of the property of a minor or an incapacitated
113	individual. The term includes an original guardian, a co-
114	guardian, and a successor guardian, as well as a person
115	appointed by the court as an emergency temporary guardian of the
116	property.
117	(15) "Information" means data, text, images, videos,
118	sounds, codes, computer programs, software, databases, or the
119	like.
120	(16) "Online tool" means an electronic service provided by
121	a custodian which allows the user, in an agreement distinct from
122	the terms-of-service agreement between the custodian and user,
123	to provide directions for disclosure or nondisclosure of digital
124	assets to a third person.
125	(17) "Person" means an individual, estate, trust, business
126	or nonprofit entity, public corporation, government or
127	governmental subdivision, agency, or instrumentality, or other
128	legal entity.
129	(18) "Personal representative" means the fiduciary
130	appointed by the court to administer the estate of a deceased
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131	individual pursuant to letters of administration or an order
132	appointing a curator or administrator ad litem for the estate.
133	The term includes an original personal representative, a
134	copersonal representative, and a successor personal
135	representative, as well as a person who is entitled to receive
136	and collect a deceased individual's property pursuant to an
137	order of summary administration issued pursuant to chapter 735.
138	(19) "Power of attorney" means a record that grants an
139	agent authority to act in the place of a principal pursuant to
140	chapter 709.
141	(20) "Principal" means an individual who grants authority
142	to an agent in a power of attorney.
143	(21) "Record" means information that is inscribed on a
144	tangible medium or that is stored in an electronic or other
145	medium and is retrievable in perceivable form.
146	(22) "Remote computing service" means a custodian that
147	provides to a user computer processing services or the storage
148	of digital assets by means of an electronic communications
149	system as defined in 18 U.S.C. s. 2510(14).
150	(23) "Terms-of-service agreement" means an agreement that
151	controls the relationship between a user and a custodian.
152	(24) "Trustee" means a fiduciary that holds legal title to
153	property under an agreement, declaration, or trust instrument
154	that creates a beneficial interest in the settlor or other
155	persons. The term includes an original trustee, a cotrustee, and
156	<u>a successor trustee.</u>

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157	(25) "User" means a person that has an account with a
158	custodian.
159	(26) "Ward" means an individual for whom a guardian has
160	been appointed.
161	(27) "Will" means an instrument admitted to probate,
162	including a codicil, executed by an individual in the manner
163	prescribed by the Florida Probate Code, which disposes of the
164	individual's property on or after his or her death. The term
165	includes an instrument that merely appoints a personal
166	representative or revokes or revises another will.
167	Section 4. Section 740.003, Florida Statutes, is created
168	to read:
169	740.003 User direction for disclosure of digital assets
170	(1) A user may use an online tool to direct the custodian
171	to disclose or not to disclose some or all of the user's digital
172	assets, including the content of electronic communications. If
173	the online tool allows the user to modify or delete a direction
174	at all times, a direction regarding disclosure using an online
175	tool overrides a contrary direction by the user in a will,
176	trust, power of attorney, or other record.
177	(2) If a user has not used an online tool to give
178	direction under subsection (1) or if the custodian has not
179	provided an online tool, the user may allow or prohibit
180	disclosure to a fiduciary of some or all of the user's digital
181	assets, including the content of electronic communications sent
182	or received by the user, in a will, trust, power of attorney, or

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183 other record.

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other record.
(3) A user's direction under subsection (1) or subsection
(2) overrides a contrary provision in a terms-of-service
agreement that does not require the user to act affirmatively
and distinctly from the user's assent to the terms of service.
Section 5. Section 740.004, Florida Statutes, is created
to read:
740.004 Terms-of-service agreement preserved
(1) This chapter does not change or impair a right of a
custodian or a user under a terms-of-service agreement to access
and use the digital assets of the user.
(2) This chapter does not give a fiduciary any new or
expanded rights other than those held by the user for whom, or
for whose estate or trust, the fiduciary acts or represents.
(3) A fiduciary's access to digital assets may be modified
or eliminated by a user, by federal law, or by a terms-of-
service agreement if the user has not provided direction under
<u>s. 740.003.</u>
Section 6. Section 740.005, Florida Statutes, is created
to read:
740.005 Procedure for disclosing digital assets
(1) When disclosing the digital assets of a user under
this chapter, the custodian may, at its sole discretion:
(a) Grant a fiduciary or designated recipient full access
to the user's account;
(b) Grant a fiduciary or designated recipient partial
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209	access to the user's account sufficient to perform the tasks
210	with which the fiduciary or designated recipient is charged; or
211	(c) Provide a fiduciary or designated recipient a copy in
212	a record of any digital asset that, on the date the custodian
213	received the request for disclosure, the user could have
214	accessed if the user were alive and had full capacity and access
215	to the account.
216	(2) A custodian may assess a reasonable administrative
217	charge for the cost of disclosing digital assets under this
218	chapter.
219	(3) A custodian is not required to disclose under this
220	chapter a digital asset deleted by a user.
221	(4) If a user directs or a fiduciary requests a custodian
222	to disclose under this chapter some, but not all, of the user's
223	digital assets to the fiduciary or a designated recipient, the
224	custodian is not required to disclose the assets if segregation
225	of the assets would impose an undue burden on the custodian. If
226	the custodian believes the direction or request imposes an undue
227	burden, the custodian or the fiduciary may seek an order from
228	the court to disclose:
229	(a) A subset limited by date of the user's digital assets;
230	(b) All of the user's digital assets to the fiduciary or
231	designated recipient, or to the court for review in chambers; or
232	(c) None of the user's digital assets.
233	Section 7. Section 740.006, Florida Statutes, is created
234	to read:

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235 740.006 Disclosure of content of electronic communications 236 of deceased user.-If a deceased user consented to or a court 237 directs the disclosure of the content of electronic communications of the user, the custodian shall disclose to the 238 239 personal representative of the estate of the user the content of 240 an electronic communication sent or received by the user if the 241 personal representative gives to the custodian: 242 (1) A written request for disclosure which is in physical 243 or electronic form; 244 (2) A certified copy of the death certificate of the user; 245 (3) A certified copy of the letters of administration, the 246 order authorizing a curator or administrator ad litem, the order 247 of summary administration issued pursuant to chapter 735, or 248 other court order; (4) Unless the user provided direction using an online 249 tool, a copy of the user's will, trust, power of attorney, or 250 251 other record evidencing the user's consent to disclosure of the 252 content of electronic communications; and If requested by the custodian: 253 (5) 254 (a) A number, username, address, or other unique 255 subscriber or account identifier assigned by the custodian to 256 identify the user's account; 257 (b) Evidence linking the account to the user; or 258 (c) A finding by the court that: 259 1. The user had a specific account with the custodian, 260 identifiable by information specified in paragraph (a);

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261	2. Disclosure of the content of electronic communications
262	of the user would not violate 18 U.S.C. ss. 2701 et seq., 47
263	U.S.C. s. 222, or other applicable law;
264	3. Unless the user provided direction using an online
265	tool, the user consented to disclosure of the content of
266	electronic communications; or
267	4. Disclosure of the content of electronic communications
268	of the user is reasonably necessary for the administration of
269	the estate.
270	Section 8. Section 740.007, Florida Statutes, is created
271	to read:
272	740.007 Disclosure of other digital assets of deceased
273	userUnless a user prohibited disclosure of digital assets or
274	the court directs otherwise, a custodian shall disclose to the
275	personal representative of the estate of a deceased user a
276	catalog of electronic communications sent or received by the
277	user and digital assets of the user, except the content of
278	electronic communications, if the personal representative gives
279	to the custodian:
280	(1) A written request for disclosure which is in physical
281	or electronic form;
282	(2) A certified copy of the death certificate of the user;
283	(3) A certified copy of the letters of administration, the
284	order authorizing a curator or administrator ad litem, the order
285	of summary administration issued pursuant to chapter 735, or
286	other court order; and
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287 (4) If requested by the custodian: 288 (a) A number, username, address, or other unique 289 subscriber or account identifier assigned by the custodian to 290 identify the user's account; 291 (b) Evidence linking the account to the user; 292 (c) An affidavit stating that disclosure of the user's 293 digital assets is reasonably necessary for the administration of 294 the estate; or 295 (d) An order of the court finding that: 296 1. The user had a specific account with the custodian, identifiable by information specified in paragraph (a); or 297 298 2. Disclosure of the user's digital assets is reasonably 299 necessary for the administration of the estate. Section 9. Section 740.008, Florida Statutes, is created 300 301 to read: 740.008 Disclosure of content of electronic communications 302 303 of principal.-To the extent a power of attorney expressly grants 304 an agent authority over the content of electronic communications 305 sent or received by the principal and unless directed otherwise 306 by the principal or the court, a custodian shall disclose to the 307 agent the content if the agent gives to the custodian: 308 (1) A written request for disclosure which is in physical 309 or electronic form; 310 (2) An original or copy of the power of attorney expressly 311 granting the agent authority over the content of electronic 312 communications of the principal;

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313	(3) A certification by the agent, under penalty of
314	perjury, that the power of attorney is in effect; and
315	(4) If requested by the custodian:
316	(a) A number, username, address, or other unique
317	subscriber or account identifier assigned by the custodian to
318	identify the principal's account; or
319	(b) Evidence linking the account to the principal.
320	Section 10. Section 740.009, Florida Statutes, is created
321	to read:
322	740.009 Disclosure of other digital assets of principal
323	Unless otherwise ordered by the court, directed by the
324	principal, or provided by a power of attorney, a custodian shall
325	disclose to an agent with specific authority over the digital
326	assets or with general authority to act on behalf of the
327	principal a catalog of electronic communications sent or
328	received by the principal, and digital assets of the principal,
329	except the content of electronic communications, if the agent
330	gives the custodian:
331	(1) A written request for disclosure which is in physical
332	or electronic form;
333	(2) An original or a copy of the power of attorney which
334	gives the agent specific authority over digital assets or
335	general authority to act on behalf of the principal;
336	(3) A certification by the agent, under penalty of
337	perjury, that the power of attorney is in effect; and
338	(4) If requested by the custodian:
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339 A number, username, address, or other unique (a) 340 subscriber or account identifier assigned by the custodian to 341 identify the principal's account; or 342 (b) Evidence linking the account to the principal. 343 Section 11. Section 740.01, Florida Statutes, is created 344 to read: 345 740.01 Disclosure of digital assets held in trust when trustee is the original user.-Unless otherwise ordered by the 346 347 court or provided in a trust, a custodian shall disclose to a 348 trustee that is an original user of an account any digital asset 349 of the account held in trust, including a catalog of electronic 350 communications of the trustee and the content of electronic 351 communications. 352 Section 12. Section 740.02, Florida Statutes, is created 353 to read: 354 740.02 Disclosure of content of electronic communications 355 held in trust when trustee is not the original user.-Unless 356 otherwise ordered by the court, directed by the user, or 357 provided in a trust, a custodian shall disclose to a trustee 358 that is not an original user of an account the content of an 359 electronic communication sent or received by an original or 360 successor user and carried, maintained, processed, received, or 361 stored by the custodian in the account of the trust if the 362 trustee gives the custodian: (1) A written request for disclosure which is in physical 363 364 or electronic form;

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365	(2) A certified copy of the trust instrument, or a
366	certification of trust under s. 736.1017, which includes consent
367	to disclosure of the content of electronic communications to the
368	trustee;
369	(3) A certification by the trustee, under penalty of
370	perjury, that the trust exists and that the trustee is a
371	currently acting trustee of the trust; and
372	(4) If requested by the custodian:
373	(a) A number, username, address, or other unique
374	subscriber or account identifier assigned by the custodian to
375	identify the trust's account; or
376	(b) Evidence linking the account to the trust.
377	Section 13. Section 740.03, Florida Statutes, is created
378	to read:
379	740.03 Disclosure of other digital assets held in trust
380	when trustee is not the original userUnless otherwise ordered
381	by the court, directed by the user, or provided in a trust, a
382	custodian shall disclose to a trustee that is not an original
383	user of an account, a catalog of electronic communications sent
384	or received by an original or successor user and stored,
385	carried, or maintained by the custodian in an account of the
386	trust and any digital assets in which the trust has a right or
387	interest, other than the content of electronic communications,
388	if the trustee gives the custodian:
389	(1) A written request for disclosure which is in physical
390	<u>or electronic form;</u>
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391	(2) A certified copy of the trust instrument, or a
392	certification of trust under s. 736.1017;
393	(3) A certification by the trustee, under penalty of
394	perjury, that the trust exists and that the trustee is a
395	currently acting trustee of the trust; and
396	(4) If requested by the custodian:
397	(a) A number, username, address, or other unique
398	subscriber or account identifier assigned by the custodian to
399	identify the trust's account; or
400	(b) Evidence linking the account to the trust.
401	Section 14. Section 740.04, Florida Statutes, is created
402	to read:
403	740.04 Disclosure of digital assets to guardian of ward
404	(1) After an opportunity for a hearing under chapter 744,
405	the court may grant a guardian access to the digital assets of a
406	ward.
407	(2) Unless otherwise ordered by the court or directed by
408	the user, a custodian shall disclose to a guardian the catalog
409	of electronic communications sent or received by the ward and
410	any digital assets in which the ward has a right or interest,
411	other than the content of electronic communications, if the
412	guardian gives the custodian:
413	(a) A written request for disclosure which is in physical
414	or electronic form;
415	(b) A certified copy of letters of plenary guardianship of
416	the property or the court order that gives the guardian
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417	authority over the digital assets of the ward; and
418	(c) If requested by the custodian:
419	1. A number, username, address, or other unique subscriber
420	or account identifier assigned by the custodian to identify the
421	ward's account; or
422	2. Evidence linking the account to the ward.
423	(3) A guardian with general authority to manage the
424	property of a ward may request a custodian of the digital assets
425	of the ward to suspend or terminate an account of the ward for
426	good cause. A request made under this section must be
427	accompanied by a certified copy of the court order giving the
428	guardian authority over the ward's property.
429	Section 15. Section 740.05, Florida Statutes, is created
430	to read:
431	740.05 Fiduciary duty and authority
432	(1) The legal duties imposed on a fiduciary charged with
433	managing tangible property apply to the management of digital
434	assets, including:
435	(a) The duty of care;
436	(b) The duty of loyalty; and
437	(c) The duty of confidentiality.
438	(2) A fiduciary's authority with respect to a digital
439	asset of a user:
440	(a) Except as otherwise provided in s. 740.003, is subject
441	to the applicable terms-of-service agreement;
442	(b) Is subject to other applicable law, including
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443	copyright law;
444	(c) Is limited by the scope of the fiduciary's duties; and
445	(d) May not be used to impersonate the user.
446	(3) A fiduciary with authority over the tangible personal
447	property of a decedent, ward, principal, or settlor has the
448	right to access any digital asset in which the decedent, ward,
449	principal, or settlor had or has a right or interest and that is
450	not held by a custodian or subject to a terms-of-service
451	agreement.
452	(4) A fiduciary acting within the scope of the fiduciary's
453	duties is an authorized user of the property of the decedent,
454	ward, principal, or settlor for the purpose of applicable
455	computer fraud and unauthorized computer access laws, including
456	under chapter 815.
457	(5) A fiduciary with authority over the tangible personal
458	property of a decedent, ward, principal, or settlor:
459	(a) Has the right to access the property and any digital
460	asset stored in it; and
461	(b) Is an authorized user for the purpose of computer
462	fraud and unauthorized computer access laws, including under
463	chapter 815.
464	(6) A custodian may disclose information in an account to
465	a fiduciary of the user when the information is required to
466	terminate an account used to access digital assets licensed to
467	the user.
468	(7) A fiduciary of a user may request a custodian to
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469	terminate the user's account. A request for termination must be
470	in writing, in paper or electronic form, and accompanied by:
471	(a) If the user is deceased, a certified copy of the death
472	certificate of the user;
473	(b) A certified copy of the letters of administration; the
474	order authorizing a curator or administrator ad litem; the order
475	of summary administration issued pursuant to chapter 735; or the
476	court order, power of attorney, or trust giving the fiduciary
477	authority over the account; and
478	(c) If requested by the custodian:
479	1. A number, username, address, or other unique subscriber
480	or account identifier assigned by the custodian to identify the
481	user's account;
482	2. Evidence linking the account to the user; or
483	3. A finding by the court that the user had a specific
484	account with the custodian, identifiable by the information
485	specified in subparagraph 1.
486	Section 16. Section 740.06, Florida Statutes, is created
487	to read:
488	740.06 Custodian compliance and immunity
489	(1) Not later than 60 days after receipt of the
490	information required under ss. 740.006-740.04, a custodian shall
491	comply with a request under this chapter from a fiduciary or
492	designated recipient to disclose digital assets or terminate an
493	account. If the custodian fails to comply, the fiduciary or
494	designated representative may apply to the court for an order

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495	directing compliance.
496	(2) An order under subsection (1) directing compliance
497	must contain a finding that compliance is not in violation of 18
498	U.S.C. s. 2702.
499	(3) A custodian may notify a user that a request for
500	disclosure or to terminate an account was made under this
501	chapter.
502	(4) A custodian may deny a request under this chapter from
503	a fiduciary or designated representative for disclosure of
504	digital assets or to terminate an account if the custodian is
505	aware of any lawful access to the account following the receipt
506	of the fiduciary's request.
507	(5) This chapter does not limit a custodian's ability to
508	obtain or require a fiduciary or designated recipient requesting
509	disclosure or termination under this chapter to obtain a court
510	order that:
511	(a) Specifies that an account belongs to the ward or
512	principal;
513	(b) Specifies that there is sufficient consent from the
514	ward or principal to support the requested disclosure; and
515	(c) Contains a finding required by a law other than this
516	chapter.
517	(6) A custodian and its officers, employees, and agents
518	are immune from liability for an act or omission done in good
519	faith in compliance with this chapter.
520	Section 17. Section 740.07, Florida Statutes, is created
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521	to read:
522	740.07 Relation to Electronic Signatures in Global and
523	National Commerce ActThis chapter modifies, limits, and
524	supersedes the Electronic Signatures in Global and National
525	Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
526	limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
527	or authorize electronic delivery of any of the notices described
528	in s. 103(b) of that act, 15 U.S.C. s. 7003(b).
529	Section 18. Section 740.08, Florida Statutes, is created
530	to read:
531	740.08 Applicability
532	(1) Subject to subsection (3), this chapter applies to:
533	(a) A fiduciary acting under a will, trust, or power of
534	attorney executed before, on, or after July 1, 2016;
535	(b) A personal representative acting for a decedent who
536	died before, on, or after July 1, 2016;
537	(c) A guardian appointed through a guardianship
538	proceeding, whether pending in a court or commenced before, on,
539	or after July 1, 2016; and
540	(d) A trustee acting under a trust created before, on, or
541	after July 1, 2016.
542	(2) This chapter applies to a custodian if the user
543	resides in this state or resided in this state at the time of
544	the user's death.
545	(3) This chapter does not apply to a digital asset of an
546	employer used by an employee in the ordinary course of the

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547	employer's business.
548	Section 19. Section 740.09, Florida Statutes, is created
549	to read:
550	740.09 SeverabilityIf any provision of this chapter or
551	its application to any person or circumstance is held invalid,
552	the invalidity does not affect other provisions or applications
553	of this chapter which can be given effect without the invalid
554	provision or application, and to this end the provisions of this
555	chapter are severable.
556	Section 20. This act shall take effect July 1, 2016.

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CODING: Words stricken are deletions; words underlined are additions.