



568310

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/05/2015	.	
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The Committee on Judiciary (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. The Division of Law Revision and Information is directed to create chapter 740, Florida Statutes, consisting of ss. 740.001-740.701, Florida Statutes, to be entitled "Privacy Expectation Afterlife and Choices Act."

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

740.001 Short title.—This chapter may be cited as the



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12 "Privacy Expectation Afterlife and Choices Act."

13 Section 3. Section 740.101, Florida Statutes, is created to  
14 read:

15 740.101 Definitions.—As used in this chapter, the term:

16 (1) "Contents," when used with respect to any wire, oral,  
17 or electronic communication, includes any information concerning  
18 the substance, purport, or meaning of that communication, as  
19 defined in 18 U.S.C. s. 2510(8), and includes the subject line  
20 of a communication.

21 (2) "Electronic communication" means any transfer of signs,  
22 signals, writing, images, sounds, data, or intelligence of any  
23 nature transmitted in whole or in part by a wire, radio,  
24 electromagnetic, photoelectronic, or photooptical system that  
25 affects interstate or foreign commerce. The term does not  
26 include:

27 (a) A wire or oral communication;

28 (b) A communication made through a tone-only paging device;

29 (c) A communication from a tracking device; or

30 (d) Electronic funds transfer information stored by a  
31 financial institution in a communications system used for the  
32 electronic storage and transfer of funds, as defined in 18  
33 U.S.C. s. 2510(12).

34 (3) "Electronic communication service" means any service  
35 that provides to the service users the ability to send or  
36 receive wire or electronic communications, as defined in 18  
37 U.S.C. s. 2510(15).

38 (4) "Electronic communications system" means any wire,  
39 radio, electromagnetic, photooptical, or photoelectronic  
40 facilities for the transmission of wire or electronic



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41 communications, and any computer facilities or related  
42 electronic equipment for the electronic storage of such  
43 communications, as defined in 18 U.S.C. s. 2510(14).

44 (5) "Provider" means an entity that provides an electronic  
45 communications service or remote computing service as defined in  
46 18 U.S.C. s. 2510 or s. 2711.

47 (6) "Record or other information pertaining to a user" has  
48 the same meaning as in 18 U.S.C. s. 2702(c).

49 (7) "Remote computing service" means the provision to the  
50 public of computer storage or processing services by means of an  
51 electronic communications system, as defined in 18 U.S.C. s.  
52 2711(2).

53 (8) "User" means a person that:

54 (a) Uses an electronic communication service; and

55 (b) Is authorized by the provider of such service to engage  
56 in such use, as defined in 18 U.S.C. s. 2510(13).

57 Section 4. Section 740.201, Florida Statutes, is created  
58 to read:

59 740.201 Powers granted to a personal representative.—

60 (1) A probate court with jurisdiction of the estate of a  
61 deceased user shall order the deceased user's provider to  
62 disclose to the personal representative of such estate a record  
63 or other information pertaining to the deceased user, not  
64 including the contents of communications or stored contents, if  
65 the court makes the following findings of facts:

66 (a) The user is deceased;

67 (b) The deceased user was the subscriber to or customer of  
68 the provider's service;

69 (c) The account belonging to the deceased user has been



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70 identified with specificity, including a unique identifier  
71 assigned by the provider;

72 (d) There are no other authorized users or owners of the  
73 deceased user's account;

74 (e) Disclosure is not in violation of 18 U.S.C. ss. 2701 et  
75 seq., 47 U.S.C. s. 222, or other applicable law;

76 (f) The request for disclosure is narrowly tailored to  
77 effect the purpose of the administration of the estate;

78 (g) The personal representative demonstrates a good faith  
79 belief that account records are relevant to resolve fiscal  
80 assets of the estate;

81 (h) The request seeks information spanning no more than 1  
82 year before the date of death; and

83 (i) The request is not in conflict with the deceased user's  
84 will or testament.

85 (2) A provider shall disclose to the personal  
86 representative of the estate of a deceased user the contents of  
87 the deceased user's account to the extent reasonably available  
88 only if the personal representative gives the provider all of  
89 the following:

90 (a) A written request for the contents of the deceased  
91 user's account;

92 (b) A copy of the death certificate of the deceased user;  
93 and

94 (c) An order of the court of probate having by law  
95 jurisdiction of the estate of the deceased user which requires  
96 the estate to first indemnify the provider from all liability in  
97 complying with the order and which finds that:

98 1. The user is deceased;



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99           2. The deceased user was the subscriber to or customer of  
100 the provider's service;

101           3. The account belonging to the deceased user has been  
102 identified with specificity, including a unique identifier  
103 assigned by the provider;

104           4. There are no other authorized users or owners of the  
105 deceased user's account;

106           5. In the deceased user's will or by the setting within the  
107 product of service regarding how the account's contents may be  
108 treated after a set period of inactivity or other event, the  
109 deceased user expressly consented to the disclosure of the  
110 contents of the deceased user's account by the executor or  
111 administrator of the estate of the deceased user; and

112           6. Disclosure of the contents is not in violation of 18  
113 U.S.C. ss. 2701 et seq., 47 U.S.C. s. 222, or other applicable  
114 law.

115           Section 5. Section 740.301, Florida Statutes, is created to  
116 read:

117           740.301 Undue burden restriction.—A court that has issued  
118 an order to a provider to disclose a record or other information  
119 pertaining to a deceased user to the personal representative of  
120 the deceased user's estate pursuant to s. 740.201 shall quash or  
121 modify such order on a motion made promptly by the provider if  
122 compliance with such order would cause an undue burden on the  
123 provider or if any requirement in s. 740.201 is not satisfied.

124           Section 6. Section 740.401, Florida Statutes, is created to  
125 read:

126           740.401 Respecting user choices and applicable laws.—  
127 (1) Notwithstanding s. 740.201, a provider may not be



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128 compelled to disclose any record or other information pertaining  
129 to a deceased user if:

130 (a) The deceased user expressed a different intent through:

131 1. Deletion of the records or contents during the user's  
132 lifetime; or

133 2. Affirmatively indicating through a setting within the  
134 product or service regarding how the user's records or contents  
135 may be treated after a set period of inactivity or other event;

136 (b) The provider is aware of any indication of lawful  
137 access to the account after the date of the deceased user's  
138 death or that the account is not that of the deceased user; or

139 (c) Disclosure violates other applicable law.

140 (2) This chapter does not confer upon the recipient any  
141 greater rights in the contents than those held by the deceased  
142 user.

143 Section 7. Section 740.501, Florida Statutes, is created to  
144 read:

145 740.501 Right to notify of a request.—A provider may send a  
146 notice to an account that a request for information was made  
147 pursuant to s. 740.201 and may provide any current user of the  
148 account a reasonable period of time to object to disclosure,  
149 during which a disclosure may not be made. If a user notifies  
150 the provider that he or she objects within the provided period  
151 of time, a disclosure may not be made.

152 Section 8. Section 740.601, Florida Statutes, is created to  
153 read:

154 740.601 Limiting posting as the deceased.—A provider is not  
155 required to allow a party requesting a record or other  
156 information pertaining to a deceased user of the provider's



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157 service to assume control of the deceased user's account.

158 Section 9. Section 740.701, Florida Statutes, is created  
159 to read:

160 740.701 Compliance in good faith liability protection.—A  
161 provider may not be held liable in any civil or criminal action  
162 for compliance in good faith with a court order issued pursuant  
163 to this act.

164 Section 10. This act shall take effect July 1, 2015.

166 ===== T I T L E A M E N D M E N T =====

167 And the title is amended as follows:

168 Delete everything before the enacting clause  
169 and insert:

170 A bill to be entitled  
171 An act relating to digital assets; providing a  
172 directive to the Division of Law Revision and  
173 Information; creating s. 740.001, F.S.; providing a  
174 short title; creating s. 740.101, F.S.; defining  
175 terms; creating s. 740.201, F.S.; requiring a probate  
176 court with jurisdiction over the estate of a deceased  
177 user to order certain entities to disclose specified  
178 information pertaining to the deceased user to the  
179 personal representative of the estate of the user  
180 under certain circumstances; providing exceptions;  
181 requiring a provider to disclose to the personal  
182 representative the contents of the deceased user's  
183 account only if the personal representative provides  
184 specific information; creating s. 740.301, F.S.;

185 requiring a court issuing a certain order, upon a



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186 motion by the provider, to quash or modify such order  
187 if compliance with the order would cause an undue  
188 burden on the provider; creating s. 740.401, F.S.;  
189 prohibiting a provider from being compelled to  
190 disclose any record or any contents of communications  
191 under certain circumstances; providing that no greater  
192 rights are conferred upon the recipient than those  
193 held by the deceased user; creating s. 740.501, F.S.;  
194 authorizing a provider to notify an account user that  
195 a request for information was made and to provide any  
196 current user of the account a reasonable amount of  
197 time to object to disclosure; prohibiting the provider  
198 from making a disclosure during such time; prohibiting  
199 the provider from making a disclosure if the user  
200 notifies the provider that he or she objects to  
201 disclosure; creating s. 740.601, F.S.; providing that  
202 a provider is not required to allow a requesting party  
203 to assume control of the deceased user's account;  
204 creating s. 740.701, F.S.; prohibiting a provider from  
205 being liable in any civil or criminal action for good  
206 faith compliance with a court order; providing an  
207 effective date.