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LEGISLATIVE ACTION

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

1           **Senate Substitute for Amendment (568310) (with title**  
2 **amendment)**

3  
4           Delete everything after the enacting clause  
5 and insert:

6           Section 1. The Division of Law Revision and Information is  
7 directed to create chapter 740, Florida Statutes, consisting of  
8 ss. 740.001-740.911, Florida Statutes, to be entitled "Fiduciary  
9 Access to Digital Assets."

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



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12           740.001 Short title.—This chapter may be cited as the  
13 “Florida Fiduciary Access to Digital Assets Act.”

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

16           740.101 Definitions.—As used in this chapter, the term:

17           (1) “Account holder” means a person that has entered into a  
18 terms-of-service agreement with a custodian or a fiduciary for  
19 such person. The term includes a deceased individual who entered  
20 into the agreement during the individual’s lifetime.

21           (2) “Agent” means a person that is granted authority to act  
22 for a principal under a durable or nondurable power of attorney,  
23 whether denominated an agent, an attorney in fact, or otherwise.  
24 The term includes an original agent, a co-agent, and a successor  
25 agent.

26           (3) “Carry” means to engage in the transmission of  
27 electronic communications.

28           (4) “Catalogue of electronic communications” means  
29 information that identifies each person with which an account  
30 holder has had an electronic communication, the time and date of  
31 the communication, and the electronic address of the person.

32           (5) “Content of an electronic communication” means  
33 information concerning the substance or meaning of the  
34 communication which:

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

36           (b) Is in electronic storage by a custodian providing an  
37 electronic communication service to the public or is carried or  
38 maintained by a custodian providing a remote computing service  
39 to the public; and

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



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- 41       (6) "Court" means a circuit court of this state.
- 42       (7) "Custodian" means a person that carries, maintains,  
43 processes, receives, or stores a digital asset of an account  
44 holder.
- 45       (8) "Digital asset" means an electronic record. The term  
46 does not include an underlying asset or liability to which an  
47 electronic record refers, unless the asset or liability is  
48 itself an electronic record.
- 49       (9) "Electronic" means technology having electrical,  
50 digital, magnetic, wireless, optical, electromagnetic, or  
51 similar capabilities.
- 52       (10) "Electronic communication" has the same meaning as  
53 provided in 18 U.S.C. s. 2510(12).
- 54       (11) "Electronic communication service" means a custodian  
55 that provides to an account holder the ability to send or  
56 receive an electronic communication.
- 57       (12) "Fiduciary" means a person that is an original,  
58 additional, or successor personal representative, guardian,  
59 agent, or trustee.
- 60       (13) "Guardian" means a person who is appointed by the  
61 court as guardian of the property of a minor or an incapacitated  
62 individual. The term includes a person appointed by the court as  
63 an emergency temporary guardian of the property.
- 64       (14) "Information" means data, text, images, videos,  
65 sounds, codes, computer programs, software, databases, or the  
66 like.
- 67       (15) "Person" means an individual, estate, trust, business  
68 or nonprofit entity, public corporation, government or  
69 governmental subdivision, agency, or instrumentality, or other



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70 legal entity.

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

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

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

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

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

87 (21) "Terms-of-service agreement" means an agreement that  
88 controls the relationship between an account holder and a  
89 custodian.

90 (22) "Trustee" means a fiduciary that holds legal title to  
91 a digital asset pursuant to an agreement, declaration, or trust  
92 instrument that creates a beneficial interest in the settlor or  
93 others.

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

96 (24) "Will" means an instrument admitted to probate,  
97 including a codicil, executed by an individual in the manner  
98 prescribed by the Florida Probate Code, which disposes of the



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99 individual's property on or after his or her death. The term  
100 includes an instrument that merely appoints a personal  
101 representative or revokes or revises another will.

102 Section 4. Section 740.201, Florida Statutes, is created to  
103 read:

104 740.201 Authority of personal representative over digital  
105 assets of a decedent.—Subject to s. 740.601(2) and unless  
106 otherwise provided by the court or the will of a decedent, a  
107 personal representative has the right to access:

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

111 (2) The catalogue of electronic communications sent or  
112 received by the decedent; and

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

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

117 740.301 Authority of guardian over digital assets of a  
118 ward.—The court, after an opportunity for hearing, may grant a  
119 guardian the right to access:

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

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

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

127 Section 6. Section 740.401, Florida Statutes, is created to



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128 read:

129 740.401 Control by agent of digital assets.—

130 (1) To the extent that a power of attorney expressly grants  
131 an agent authority over the content of an electronic  
132 communication of the principal, and subject to s. 740.601(2),  
133 the agent has the right to access the content of an electronic  
134 communication that the custodian is permitted to disclose under  
135 the Electronic Communications Privacy Act, 18 U.S.C. s. 2702(b).

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

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

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

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

145 740.501 Control by trustee of digital assets.—Subject to s.  
146 740.601(2) and unless otherwise provided by the court or the  
147 terms of a trust:

148 (1) A trustee or a successor of a trustee who is an  
149 original account holder has the right to access each digital  
150 asset held in trust, including any catalogue of electronic  
151 communications sent or received and the content of an electronic  
152 communication; or

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

156 (a) The catalogue of electronic communications sent or



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157 received by the account holder;

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

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

163 Section 8. Section 740.601, Florida Statutes, is created to  
164 read:

165 740.601 Fiduciary access and authority.—

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

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

173 (b) Has, for the purpose of applicable electronic privacy  
174 laws, the lawful consent of the account holder for the custodian  
175 to divulge the content of an electronic communication to the  
176 fiduciary; and

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

179 (2) Unless an account holder, after June 30, 2015, agrees,  
180 by an affirmative act separate from the account holder's assent  
181 to other provisions of the terms of the service agreement, to a  
182 provision in the service agreement which limits a fiduciary's  
183 access to a digital asset of the account holder:

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



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

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

195       (4) As to tangible personal property capable of receiving,  
196 storing, processing, or sending a digital asset, a fiduciary  
197 with authority over the property of a decedent, ward, principal,  
198 or settlor has the right to access the property and any digital  
199 asset stored in it and is an authorized user for purposes of any  
200 applicable computer fraud and unauthorized access laws,  
201 including the laws of this state.

202       Section 9. Section 740.701, Florida Statutes, is created to  
203 read:

204       740.701 Compliance.—

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

209       (a) Access to the digital asset;

210       (b) Control of the digital asset; and

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

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

214       (a) A personal representative who has the right of access



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215 under s. 740.201, the request must be accompanied by a certified  
216 copy of the letters of administration of the personal  
217 representative, an order authorizing a curator or administrator  
218 ad litem, or other court order;

219 (b) A guardian that has the right of access under s.  
220 740.301, the request must be accompanied by a certified copy of  
221 letters of plenary guardianship of the property or a court order  
222 that gives the guardian authority over the digital asset;

223 (c) An agent that has the right of access under s. 740.401,  
224 the request must be accompanied by an original or a copy of the  
225 power of attorney which authorizes the agent to exercise  
226 authority over the digital asset and a certification of the  
227 agent, under penalty of perjury, that the power of attorney is  
228 in effect;

229 (d) A trustee that has the right of access under s.  
230 740.501, the request must be accompanied by a certified copy of  
231 the trust instrument, or a certification of trust under s.  
232 736.1017, which authorizes the trustee to exercise authority  
233 over the digital asset; or

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

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

242 (4) A custodian that receives a certification of trust may  
243 require the trustee to provide copies of excerpts from the



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244 original trust instrument and later amendments which designate  
245 the trustee and confer on the trustee the power to act in the  
246 pending transaction.

247 (5) A custodian that acts in reliance on a certification of  
248 trust without knowledge that the representations contained in it  
249 are incorrect is not liable to any person for so acting and may  
250 assume without inquiry the existence of facts stated in the  
251 certification.

252 (6) A custodian that enters into a transaction in good  
253 faith and in reliance on a certification of trust may enforce  
254 the transaction against the trust property as if the  
255 representations contained in the certification were correct.

256 (7) A custodian that demands the trust instrument in  
257 addition to a certification of trust or excerpts under  
258 subsection (4) is liable for damages if the court determines  
259 that the custodian did not act in good faith in demanding the  
260 trust instrument.

261 (8) This section does not limit the right of a person to  
262 obtain a copy of a trust instrument in a judicial proceeding  
263 concerning the trust.

264 Section 10. Section 740.801, Florida Statutes, is created  
265 to read:

266 740.801 Immunity.—A custodian and its officers, employees,  
267 and agents are immune from liability for any action done in good  
268 faith in compliance with this chapter.

269 Section 11. Section 740.901, Florida Statutes, is created  
270 to read:

271 740.901 Relation to Electronic Signatures in Global and  
272 National Commerce Act.—This chapter modifies, limits, or



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273 supersedes the Electronic Signatures in Global and National  
274 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,  
275 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),  
276 or authorize electronic delivery of the notices described in s.  
277 103(b) of that act, 15 U.S.C. s. 7003(b).

278 Section 12. Section 740.911, Florida Statutes, is created  
279 to read:

280 740.911 Applicability.—

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

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

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

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

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

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

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

295  
296 ===== T I T L E A M E N D M E N T =====

297 And the title is amended as follows:

298 Delete everything before the enacting clause  
299 and insert:

300 A bill to be entitled

301 An act relating to digital assets; providing a



302 directive to the Division of Law Revision and  
303 Information; creating s. 740.001, F.S.; providing a  
304 short title; creating s. 740.101, F.S.; defining  
305 terms; creating s. 740.201, F.S.; authorizing a  
306 personal representative to have access to specified  
307 digital assets of a decedent under certain  
308 circumstances; creating s. 740.301, F.S.; authorizing  
309 a guardian to have access to specified digital assets  
310 of a ward under certain circumstances; creating s.  
311 740.401, F.S.; authorizing an agent to have access to  
312 specified digital assets of a principal under certain  
313 circumstances; creating s. 740.501, F.S.; authorizing  
314 a trustee to have access to specified digital assets  
315 held in trust under certain circumstances; creating s.  
316 740.601, F.S.; providing the rights of a fiduciary  
317 relating to digital assets; providing that specified  
318 provisions in a terms of service agreement are  
319 unenforceable or void as against the public policy of  
320 this state under certain circumstances; creating s.  
321 740.701, F.S.; providing requirements for compliance  
322 for a custodian, a personal representative, a  
323 guardian, an agent, a trustee, or another person that  
324 is entitled to receive and collect specified digital  
325 assets; providing for damages if a demand for the  
326 trust instrument is not made in good faith by a  
327 custodian; providing applicability; creating s.  
328 740.801, F.S.; providing immunity for a custodian and  
329 its officers, employees, and agents for any action  
330 done in good faith and in compliance with ch. 740,



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331 F.S.; creating s. 740.901, F.S.; clarifying the  
332 relationship of ch. 740, F.S., to the Electronic  
333 Signatures in Global and National Commerce Act;  
334 creating s. 740.911, F.S.; providing applicability;  
335 providing an effective date.