

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Fant offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

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

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

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
 15 to read:

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

17 (1) "Account holder" means a person that has entered into

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18 a terms-of-service agreement with a custodian and also includes
19 a fiduciary for such person. The term includes a deceased
20 individual who entered into the agreement during the
21 individual's lifetime.

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

27 (3) "Carry" means to engage in the transmission of
28 electronic communications.

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

33 (5) "Content of an electronic communication" means
34 information concerning the substance or meaning of an electronic
35 communication which:

36 (a) Has been sent or received by an account holder;

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

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

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

43 (7) "Custodian" means a person that carries, maintains,

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44 processes, receives, or stores a digital asset of an account
45 holder.

46 (8) "Digital asset" means a record that is electronic. The
47 term does not include an underlying asset or liability unless
48 the asset or liability is itself a record that is electronic.

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 the definition 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 that has been appointed by
61 the court as guardian of the property of a minor or
62 incapacitated individual. The term includes a person that has
63 been appointed by the court as an emergency temporary guardian
64 of the property.

65 (14) "Information" means data, text, images, videos,
66 sounds, codes, computer programs, software, databases, or the
67 like.

68 (15) "Person" means an individual, estate, trust, business
69 or nonprofit entity, public corporation, government or

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70 governmental subdivision, agency, or instrumentality, or other
71 legal entity.

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

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

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

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

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

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

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

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

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96 application for the appointment of a guardian is pending.

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

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

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

109 (1) The content of an electronic communication that the
110 custodian is permitted to disclose under 47 U.S.C. s. 222 or
111 under the Electronic Communications Privacy Act, 18 U.S.C. s.
112 2702(b);

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

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

117 Section 5. Section 740.301, Florida Statutes, is created
118 to read:

119 740.301 Authority of guardian over digital assets of a
120 ward.— Subject to s. 740.601(2), the court, after an opportunity
121 for hearing, may grant a guardian the right to access:

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122 (1) The content of an electronic communication that the
123 custodian is permitted to disclose under 47 U.S.C. s. 222 or
124 under the Electronic Communications Privacy Act, 18 U.S.C. s.
125 2702(b);

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

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

130 Section 6. Section 740.401, Florida Statutes, is created
131 to read:

132 740.401 Control by agent of digital assets.—

133 (1) To the extent a power of attorney expressly grants
134 authority to an agent over the content of an electronic
135 communication of the principal and subject to s. 740.601(2), the
136 agent has the right to access the content of an electronic
137 communication that the custodian is permitted to disclose under
138 47 U.S.C. s. 222 or under the Electronic Communications Privacy
139 Act, 18 U.S.C. s. 2702(b).

140 (2) Subject to s. 740.601(2) and unless otherwise provided
141 by a power of attorney or a court order, an agent has the right
142 to access:

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

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

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147 Section 7. Section 740.501, Florida Statutes, is created
148 to read:

149 740.501 Control by trustee of digital assets.—Subject to
150 s. 740.601(2) and unless otherwise provided by the court or the
151 terms of a trust, a trustee or a successor of a trustee that is:

152 (1) An original account holder has the right to access
153 each digital asset held in trust, including the catalogue of
154 electronic communications sent or received and the content of an
155 electronic communication; or

156 (2) Not an original account holder has the right to access
157 the following digital assets held in trust:

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

160 (b) The content of an electronic communication that the
161 custodian is permitted to disclose under 47 U.S.C. s. 222 or
162 under the Electronic Communications Privacy Act, 18 U.S.C. s.
163 2702(b); and

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

166 Section 8. Section 740.601, Florida Statutes, is created
167 to read:

168 740.601 Fiduciary access and authority.—

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

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

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

176 (b) Is deemed to have the lawful consent of the account
177 holder for the custodian to divulge the content of an electronic
178 communication to the fiduciary under applicable electronic
179 privacy laws; and

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

182 (2) If a provision in a terms-of-service agreement limits
183 a fiduciary's access to a digital asset of the account holder,
184 the provision is void as against the strong public policy of
185 this state unless the account holder agreed to the provision by
186 an affirmative act separate from the account holder's assent to
187 other provisions of the terms-of-service agreement. A direction
188 provided by the account holder to a custodian by an affirmative
189 act separate from the account holder's assent to other
190 provisions of the terms of service agreement supersedes any
191 contrary direction in the account holder's will, trust, or power
192 of attorney.

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

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

205 Section 9. Section 740.701, Florida Statutes, is created
206 to read:

207 740.701 Compliance.—

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

212 (a) Access to the digital asset;

213 (b) Control of the digital asset; and

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

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

217 (a) A personal representative who has the right of access
218 under s. 740.201, the request must be accompanied by a certified
219 copy of the letters of administration of the personal
220 representative, an order authorizing a curator or administrator
221 ad litem, or other court order;

222 (b) A guardian that has the right of access under s.
223 740.301, the request must be accompanied by a certified copy of

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224 letters of plenary guardianship of the property or a court order
225 that gives the guardian authority over the digital asset;

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

232 (d) A trustee that has the right of access under s.
233 740.501, the request must be accompanied by a certified copy of
234 the trust instrument, or a certification of trust under s.
235 736.1017, which authorizes the trustee to exercise authority
236 over the digital asset; or

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

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

245 (4) A custodian that receives a certification of trust may
246 require the trustee to provide copies of excerpts from the
247 original trust instrument and later amendments which designate
248 the trustee and confer on the trustee the power to act in the
249 pending transaction.

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

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

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

264 (8) This section does not limit the right of a person to
265 obtain a copy of a trust instrument in a judicial proceeding
266 concerning the trust.

267 Section 10. Section 740.801, Florida Statutes, is created
268 to read:

269 740.801 Immunity.—A custodian and its officers, employees,
270 and agents are immune from liability for any action done in good
271 faith in compliance with this chapter.

272 Section 11. Section 740.901, Florida Statutes, is created
273 to read:

274 740.901 Relation to Electronic Signatures in Global and
275 National Commerce Act.—This chapter modifies, limits, or

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276 supersedes the Electronic Signatures in Global and National
277 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
278 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
279 or authorize electronic delivery of the notices described in s.
280 103(b) of that act, 15 U.S.C. s. 7003(b).

281 Section 12. Section 740.911, Florida Statutes, is created
282 to read:

283 740.911 Exception for anonymous accounts.—

284 (1) Nothing in this chapter prevents any person from
285 opening an anonymous account.

286 (2) The custodian of an anonymous account is not required
287 to provide a fiduciary with access to the anonymous account
288 unless the fiduciary establishes by clear and convincing
289 evidence:

290 (a) That the owner of the anonymous account is deceased;

291 (b) That the anonymous account belonged to a particular,
292 identifiable, decedent; and

293 (c) That the fiduciary has legal authority over the estate
294 of the decedent who owned the anonymous account.

295 Section 13. Section 740.921, Florida Statutes, is created
296 to read:

297 740.921 Applicability.—

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

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

301 (b) A personal representative acting for a decedent who

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302 died before, on, or after July 1, 2015;

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

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

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

311 Section 14. This act shall take effect July 1, 2015.

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313
314 **T I T L E A M E N D M E N T**

315 Remove everything before the enacting clause and insert:
316 An act relating to digital assets; providing a directive to
317 the Division of Law Revision and Information; creating s.
318 740.001, F.S.; providing a short title; creating s.
319 740.101, F.S.; defining terms; creating s. 740.201, F.S.;;
320 authorizing a personal representative to have access to
321 specified digital assets of a decedent under certain
322 circumstances; creating s. 740.301, F.S.; authorizing a
323 guardian to have access to specified digital assets of a
324 ward under certain circumstances; creating s. 740.401,
325 F.S.; authorizing an agent to have access to specified
326 digital assets of a principal under certain circumstances;
327 creating s. 740.501, F.S.; authorizing a trustee to have

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328 access to specified digital assets held in trust under
329 certain circumstances; creating s. 740.601, F.S.; providing
330 the rights of a fiduciary relating to digital assets;
331 providing that specified provisions in a terms-of-service
332 agreement are unenforceable or void as against the strong
333 public policy of this state under certain circumstances;
334 creating s. 740.701, F.S.; providing requirements for
335 compliance for a custodian, a personal representative, a
336 guardian, an agent, a trustee, or another person that is
337 entitled to receive and collect specified digital assets;
338 providing for damages if a demand for the trust instrument
339 is not made in good faith by a custodian; providing
340 applicability; creating s. 740.801, F.S.; providing
341 immunity for a custodian and its officers, employees, and
342 agents for any action done in good faith and in compliance
343 with ch. 740, F.S.; creating s. 740.901, F.S.; clarifying
344 the relationship of ch. 740, F.S., to the Electronic
345 Signatures in Global and National Commerce Act; creating s.
346 740.911, F.S.; providing applicability to an anonymous
347 account; creating s. 740.921, F.S.; providing
348 applicability; providing an effective date.

349