

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. 740.101, F.S.; defining
6 terms; creating s. 740.201, F.S.; authorizing a
7 personal representative to have access to specified
8 digital assets of a decedent under certain
9 circumstances; creating s. 740.301, F.S.; authorizing
10 a guardian to have access to specified digital assets
11 of a ward under certain circumstances; creating s.
12 740.401, F.S.; authorizing an agent to have access to
13 specified digital assets of a principal under certain
14 circumstances; creating s. 740.501, F.S.; authorizing
15 a trustee to have access to specified digital assets
16 held in trust under certain circumstances; creating s.
17 740.601, F.S.; providing the rights of a fiduciary
18 relating to digital assets; providing that specified
19 provisions in a terms-of-service agreement are
20 unenforceable or void as against the strong public
21 policy of this state under certain circumstances;
22 creating s. 740.701, F.S.; providing requirements for
23 compliance for a custodian, a personal representative,
24 a guardian, an agent, a trustee, or another person
25 that is entitled to receive and collect specified
26 digital assets; providing for damages if a demand for

27 the trust instrument is not made in good faith by a
 28 custodian; providing applicability; creating s.
 29 740.801, F.S.; providing immunity for a custodian and
 30 its officers, employees, and agents for any action
 31 performed in good faith in compliance with specified
 32 provisions of law; creating s. 740.901, F.S.;
 33 providing applicability with respect to a specified
 34 federal act; creating s. 740.911, F.S.; providing
 35 applicability with respect to an anonymous account;
 36 creating s. 740.921, F.S.; providing applicability
 37 with respect to specified persons and certain digital
 38 assets; providing an effective date.

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 40 Be It Enacted by the Legislature of the State of Florida:

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 42 Section 1. The Division of Law Revision and Information is
 43 directed to create chapter 740, Florida Statutes, consisting of
 44 sections 740.001-740.921, Florida Statutes, to be entitled
 45 "Fiduciary Access to Digital Assets."

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

48 740.001 Short title.—This chapter may be cited as the
 49 "Florida Fiduciary Access to Digital Assets Act."

50 Section 3. Section 740.101, Florida Statutes, is created
 51 to read:

52 740.101 Definitions.—As used in this chapter, the term:

53 (1) "Account holder" means a person that has entered into
54 a terms-of-service agreement with a custodian and also includes
55 a fiduciary for such person. The term includes a deceased
56 individual who entered into the agreement during the
57 individual's lifetime.

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

63 (3) "Carry" means to engage in the transmission of
64 electronic communications.

65 (4) "Catalogue of electronic communications" means
66 information that identifies each person with which an account
67 holder has had an electronic communication, the time and date of
68 the communication, and the electronic address of the person.

69 (5) "Content of an electronic communication" means
70 information concerning the substance or meaning of an electronic
71 communication which:

72 (a) Is sent or received by an account holder.

73 (b) Is in electronic storage by a custodian providing an
74 electronic-communication service to the public or is carried or
75 maintained by a custodian providing a remote-computing service
76 to the public.

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

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

79 (7) "Custodian" means a person that carries, maintains,
80 processes, receives, or stores a digital asset of an account
81 holder.

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

85 (9) "Electronic" means technology having electrical,
86 digital, magnetic, wireless, optical, electromagnetic, or
87 similar capabilities.

88 (10) "Electronic communication" has the same meaning as
89 provided in 18 U.S.C. s. 2510(12).

90 (11) "Electronic communication service" means a custodian
91 that provides to an account holder the ability to send or
92 receive an electronic communication.

93 (12) "Fiduciary" means a person that is an original,
94 additional, or successor personal representative, guardian,
95 agent, or trustee.

96 (13) "Guardian" means a person that has been appointed by
97 the court as guardian of the property of a minor or
98 incapacitated individual. The term includes a person that has
99 been appointed by the court as an emergency temporary guardian
100 of the property.

101 (14) "Information" means data, text, images, videos,
102 sounds, codes, computer programs, software, databases, or the
103 like.

104 (15) "Person" means an individual, estate, trust, business

105 or nonprofit entity, public corporation, government or
106 governmental subdivision, agency, or instrumentality, or other
107 legal entity.

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

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

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

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

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

124 (21) "Terms-of-service agreement" means an agreement that
125 controls the relationship between an account holder and a
126 custodian.

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

130 (23) "Ward" means an individual for whom a guardian has

131 been appointed. The term includes an individual for whom an
132 application for the appointment of a guardian is pending.

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

139 Section 4. Section 740.201, Florida Statutes, is created
140 to read:

141 740.201 Authority of personal representative over digital
142 assets of a decedent.—Subject to s. 740.601(2) and unless
143 otherwise provided by the court or the will of a decedent, the
144 personal representative of the decedent has the right to access:

145 (1) The content of an electronic communication that the
146 custodian is permitted to disclose under 47 U.S.C. s. 222 or
147 under the Electronic Communications Privacy Act, 18 U.S.C. s.
148 2702(b) .

149 (2) The catalogue of electronic communications sent or
150 received by the decedent.

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

153 Section 5. Section 740.301, Florida Statutes, is created
154 to read:

155 740.301 Authority of guardian over digital assets of a
156 ward.—Subject to s. 740.601(2), the court, after an opportunity

157 for hearing, may grant a guardian the right to access:

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

162 (2) The catalogue of electronic communications sent or
 163 received by the ward.

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

166 Section 6. Section 740.401, Florida Statutes, is created
 167 to read:

168 740.401 Control by agent of digital assets.—

169 (1) To the extent a power of attorney expressly grants
 170 authority to an agent over the content of an electronic
 171 communication of the principal and subject to s. 740.601(2), the
 172 agent has the right to access the content of an electronic
 173 communication that the custodian is permitted to disclose under
 174 47 U.S.C. s. 222 or under the Electronic Communications Privacy
 175 Act, 18 U.S.C. s. 2702(b).

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

179 (a) The catalogue of electronic communications sent or
 180 received by the principal.

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

183 Section 7. Section 740.501, Florida Statutes, is created
 184 to read:

185 740.501 Control by trustee of digital assets.—Subject to
 186 s. 740.601(2) and unless otherwise provided by the court or the
 187 terms of a trust, a trustee or a successor of a trustee that is:

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

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

194 (a) The catalogue of electronic communications sent or
 195 received by the account holder.

196 (b) The content of an electronic communication that the
 197 custodian is permitted to disclose under 47 U.S.C. s. 222 or
 198 under the Electronic Communications Privacy Act, 18 U.S.C. s.
 199 2702(b).

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

202 Section 8. Section 740.601, Florida Statutes, is created
 203 to read:

204 740.601 Fiduciary access and authority.—

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

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

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

212 (b) Is deemed to have the lawful consent of the account
213 holder for the custodian to divulge the content of an electronic
214 communication to the fiduciary under applicable electronic
215 privacy laws; and

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

218 (2) If a provision in a terms-of-service agreement limits
219 a fiduciary's access to a digital asset of the account holder,
220 the provision is void as against the strong public policy of
221 this state unless the account holder agreed to the provision by
222 an affirmative act separate from the account holder's assent to
223 other provisions of the terms-of-service agreement. A direction
224 provided by the account holder to a custodian by an affirmative
225 act separate from the account holder's assent to other
226 provisions of the terms-of-service agreement supersedes any
227 contrary direction in the account holder's will, trust, or power
228 of attorney.

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

234 (4) As to tangible personal property capable of receiving,
235 storing, processing, or sending a digital asset, a fiduciary
236 with authority over the property of a decedent, ward, principal,
237 or settlor has the right to access the property and any digital
238 asset stored in it and is an authorized user for purposes of any
239 applicable computer fraud and unauthorized access laws,
240 including the laws of this state.

241 Section 9. Section 740.701, Florida Statutes, is created
242 to read:

243 740.701 Compliance.—

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

248 (a) Access to the digital asset.

249 (b) Control of the digital asset.

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

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

253 (a) A personal representative who has the right of access
254 under s. 740.201, the request must be accompanied by a certified
255 copy of the letters of administration of the personal
256 representative, an order authorizing a curator or administrator
257 ad litem, or other court order;

258 (b) A guardian that has the right of access under s.
259 740.301, the request must be accompanied by a certified copy of

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

262 (c) An agent that has the right of access under s.
263 740.401, the request must be accompanied by an original or a
264 copy of the power of attorney which authorizes the agent to
265 exercise authority over the digital asset and a certification of
266 the agent, under penalty of perjury, that the power of attorney
267 is in effect;

268 (d) A trustee that has the right of access under s.
269 740.501, the request must be accompanied by a certified copy of
270 the trust instrument, or a certification of trust under s.
271 736.1017, which authorizes the trustee to exercise authority
272 over the digital asset; or

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

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

281 (4) A custodian that receives a certification of trust may
282 require the trustee to provide copies of excerpts from the
283 original trust instrument and later amendments which designate
284 the trustee and confer on the trustee the power to act in the
285 pending transaction.

286 (5) A custodian that acts in reliance on a certification
 287 of trust without knowledge that the representations contained in
 288 it are incorrect is not liable to any person for so acting and
 289 may assume without inquiry the existence of facts stated in the
 290 certification.

291 (6) A custodian that enters into a transaction in good
 292 faith and in reliance on a certification of trust may enforce
 293 the transaction against the trust property as if the
 294 representations contained in the certification were correct.

295 (7) A custodian that demands the trust instrument in
 296 addition to a certification of trust or excerpts under
 297 subsection (4) is liable for damages if the court determines
 298 that the custodian did not act in good faith in demanding the
 299 trust instrument.

300 (8) This section does not limit the right of a person to
 301 obtain a copy of a trust instrument in a judicial proceeding
 302 concerning the trust.

303 Section 10. Section 740.801, Florida Statutes, is created
 304 to read:

305 740.801 Immunity.—A custodian and its officers, employees,
 306 and agents are immune from liability for any action performed in
 307 good faith in compliance with this chapter.

308 Section 11. Section 740.901, Florida Statutes, is created
 309 to read:

310 740.901 Relation to Electronic Signatures in Global and
 311 National Commerce Act.—This chapter modifies, limits, or

312 supersedes the Electronic Signatures in Global and National
313 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
314 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
315 or authorize electronic delivery of the notices described in s.
316 103(b) of that act, 15 U.S.C. s. 7003(b).

317 Section 12. Section 740.911, Florida Statutes, is created
318 to read:

319 740.911 Exception for anonymous accounts.—

320 (1) This chapter does not prevent a person from opening an
321 anonymous account.

322 (2) The custodian of an anonymous account is not required
323 to provide a fiduciary with access to the anonymous account
324 unless the fiduciary establishes by clear and convincing
325 evidence that:

326 (a) The owner of the anonymous account is deceased.

327 (b) The anonymous account belonged to a particular,
328 identifiable decedent.

329 (c) The fiduciary has legal authority over the estate of
330 the decedent who owned the anonymous account.

331 Section 13. Section 740.921, Florida Statutes, is created
332 to read:

333 740.921 Applicability.—

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

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

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

CS/HB 313

2015

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

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

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

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

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