



254758

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
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The Committee on Rules (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 171 - 502
and insert:
to disclose to a designated recipient or not to disclose some or
all of the user's digital assets, including the content of
electronic communications. If the online tool allows the user to
modify or delete a direction at all times, a direction regarding
disclosure using an online tool overrides a contrary direction
by the user in a will, trust, power of attorney, or other
record.



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12 (2) If a user has not used an online tool to give direction
13 under subsection (1) or if the custodian has not provided an
14 online tool, the user may allow or prohibit disclosure to a
15 fiduciary of some or all of the user's digital assets, including
16 the content of electronic communications sent or received by the
17 user, in a will, trust, power of attorney, or other record.

18 (3) A user's direction under subsection (1) or subsection
19 (2) overrides a contrary provision in a terms-of-service
20 agreement that does not require the user to act affirmatively
21 and distinctly from the user's assent to the terms of service.

22 Section 5. Section 740.004, Florida Statutes, is created to
23 read:

24 740.004 Terms-of-service agreement preserved.—

25 (1) This chapter does not change or impair a right of a
26 custodian or a user under a terms-of-service agreement to access
27 and use the digital assets of the user.

28 (2) This chapter does not give a fiduciary or a designated
29 recipient any new or expanded rights other than those held by
30 the user for whom, or for whose estate or trust, the fiduciary
31 or designated recipient acts or represents.

32 (3) A fiduciary's or designated recipient's access to
33 digital assets may be modified or eliminated by a user, by
34 federal law, or by a terms-of-service agreement if the user has
35 not provided direction under s. 740.003.

36 Section 6. Section 740.005, Florida Statutes, is created to
37 read:

38 740.005 Procedure for disclosing digital assets.—

39 (1) When disclosing the digital assets of a user under this
40 chapter, the custodian may, at its sole discretion:



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41 (a) Grant a fiduciary or designated recipient full access
42 to the user's account;

43 (b) Grant a fiduciary or designated recipient partial
44 access to the user's account sufficient to perform the tasks
45 with which the fiduciary or designated recipient is charged; or

46 (c) Provide a fiduciary or designated recipient a copy in a
47 record of any digital asset that, on the date the custodian
48 received the request for disclosure, the user could have
49 accessed if the user were alive and had full capacity and access
50 to the account.

51 (2) A custodian may assess a reasonable administrative
52 charge for the cost of disclosing digital assets under this
53 chapter.

54 (3) A custodian is not required to disclose under this
55 chapter a digital asset deleted by a user.

56 (4) If a user directs or a fiduciary requests a custodian
57 to disclose under this chapter some, but not all, of the user's
58 digital assets to the fiduciary or a designated recipient, the
59 custodian is not required to disclose the assets if segregation
60 of the assets would impose an undue burden on the custodian. If
61 the custodian believes the direction or request imposes an undue
62 burden, the custodian or the fiduciary may seek an order from
63 the court to disclose:

64 (a) A subset limited by date of the user's digital assets;

65 (b) All of the user's digital assets to the fiduciary or
66 designated recipient, or to the court for review in chambers; or

67 (c) None of the user's digital assets.

68 Section 7. Section 740.006, Florida Statutes, is created to
69 read:



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70 740.006 Disclosure of content of electronic communications
71 of deceased user.—If a deceased user consented to or a court
72 directs the disclosure of the content of electronic
73 communications of the user, the custodian shall disclose to the
74 personal representative of the estate of the user the content of
75 an electronic communication sent or received by the user if the
76 personal representative gives to the custodian:

77 (1) A written request for disclosure which is in physical
78 or electronic form;

79 (2) A certified copy of the death certificate of the user;

80 (3) A certified copy of the letters of administration, the
81 order authorizing a curator or administrator ad litem, the order
82 of summary administration issued pursuant to chapter 735, or
83 other court order;

84 (4) Unless the user provided direction using an online
85 tool, a copy of the user's will, trust, power of attorney, or
86 other record evidencing the user's consent to disclosure of the
87 content of electronic communications; and

88 (5) If requested by the custodian:

89 (a) A number, username, address, or other unique subscriber
90 or account identifier assigned by the custodian to identify the
91 user's account;

92 (b) Evidence linking the account to the user; or

93 (c) A finding by the court that:

94 1. The user had a specific account with the custodian,
95 identifiable by information specified in paragraph (a);

96 2. Disclosure of the content of electronic communications
97 of the user would not violate 18 U.S.C. s. 2701 et seq., 47
98 U.S.C. s. 222, or other applicable law;



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99 3. Unless the user provided direction using an online tool,
100 the user consented to disclosure of the content of electronic
101 communications; or

102 4. Disclosure of the content of electronic communications
103 of the user is reasonably necessary for the administration of
104 the estate.

105 Section 8. Section 740.007, Florida Statutes, is created to
106 read:

107 740.007 Disclosure of other digital assets of deceased
108 user.—Unless a user prohibited disclosure of digital assets or
109 the court directs otherwise, a custodian shall disclose to the
110 personal representative of the estate of a deceased user a
111 catalog of electronic communications sent or received by the
112 user and digital assets of the user, except the content of
113 electronic communications, if the personal representative gives
114 to the custodian:

115 (1) A written request for disclosure which is in physical
116 or electronic form;

117 (2) A certified copy of the death certificate of the user;

118 (3) A certified copy of the letters of administration, the
119 order authorizing a curator or administrator ad litem, the order
120 of summary administration issued pursuant to chapter 735, or
121 other court order; and

122 (4) If requested by the custodian:

123 (a) A number, username, address, or other unique subscriber
124 or account identifier assigned by the custodian to identify the
125 user's account;

126 (b) Evidence linking the account to the user;

127 (c) An affidavit stating that disclosure of the user's



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128 digital assets is reasonably necessary for the administration of
129 the estate; or

130 (d) An order of the court finding that:

131 1. The user had a specific account with the custodian,
132 identifiable by information specified in paragraph (a); or

133 2. Disclosure of the user's digital assets is reasonably
134 necessary for the administration of the estate.

135 Section 9. Section 740.008, Florida Statutes, is created to
136 read:

137 740.008 Disclosure of content of electronic communications
138 of principal.-To the extent a power of attorney expressly grants
139 an agent authority over the content of electronic communications
140 sent or received by the principal and unless directed otherwise
141 by the principal or the court, a custodian shall disclose to the
142 agent the content if the agent gives to the custodian:

143 (1) A written request for disclosure which is in physical
144 or electronic form;

145 (2) An original or copy of the power of attorney expressly
146 granting the agent authority over the content of electronic
147 communications of the principal;

148 (3) A certification by the agent, under penalty of perjury,
149 that the power of attorney is in effect; and

150 (4) If requested by the custodian:

151 (a) A number, username, address, or other unique subscriber
152 or account identifier assigned by the custodian to identify the
153 principal's account; or

154 (b) Evidence linking the account to the principal.

155 Section 10. Section 740.009, Florida Statutes, is created
156 to read:



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157 740.009 Disclosure of other digital assets of principal.-
158 Unless otherwise ordered by the court, directed by the
159 principal, or provided by a power of attorney, a custodian shall
160 disclose to an agent with specific authority over the digital
161 assets or with general authority to act on behalf of the
162 principal a catalog of electronic communications sent or
163 received by the principal, and digital assets of the principal,
164 except the content of electronic communications, if the agent
165 gives the custodian:

166 (1) A written request for disclosure which is in physical
167 or electronic form;

168 (2) An original or a copy of the power of attorney which
169 gives the agent specific authority over digital assets or
170 general authority to act on behalf of the principal;

171 (3) A certification by the agent, under penalty of perjury,
172 that the power of attorney is in effect; and

173 (4) If requested by the custodian:

174 (a) A number, username, address, or other unique subscriber
175 or account identifier assigned by the custodian to identify the
176 principal's account; or

177 (b) Evidence linking the account to the principal.

178 Section 11. Section 740.01, Florida Statutes, is created to
179 read:

180 740.01 Disclosure of digital assets held in trust when
181 trustee is the original user.-Unless otherwise ordered by the
182 court or provided in a trust, a custodian shall disclose to a
183 trustee that is an original user of an account any digital asset
184 of the account held in trust, including a catalog of electronic
185 communications of the trustee and the content of electronic



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186 communications.

187 Section 12. Section 740.02, Florida Statutes, is created to
188 read:

189 740.02 Disclosure of content of electronic communications
190 held in trust when trustee is not the original user.—Unless
191 otherwise ordered by the court, directed by the user, or
192 provided in a trust, a custodian shall disclose to a trustee
193 that is not an original user of an account the content of an
194 electronic communication sent or received by an original or
195 successor user and carried, maintained, processed, received, or
196 stored by the custodian in the account of the trust if the
197 trustee gives the custodian:

198 (1) A written request for disclosure which is in physical
199 or electronic form;

200 (2) A certified copy of the trust instrument, or a
201 certification of trust under s. 736.1017, which includes consent
202 to disclosure of the content of electronic communications to the
203 trustee;

204 (3) A certification by the trustee, under penalty of
205 perjury, that the trust exists and that the trustee is a
206 currently acting trustee of the trust; and

207 (4) If requested by the custodian:

208 (a) A number, username, address, or other unique subscriber
209 or account identifier assigned by the custodian to identify the
210 trust's account; or

211 (b) Evidence linking the account to the trust.

212 Section 13. Section 740.03, Florida Statutes, is created to
213 read:

214 740.03 Disclosure of other digital assets held in trust



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215 when trustee is not the original user.—Unless otherwise ordered
216 by the court, directed by the user, or provided in a trust, a
217 custodian shall disclose to a trustee that is not an original
218 user of an account, a catalog of electronic communications sent
219 or received by an original or successor user and stored,
220 carried, or maintained by the custodian in an account of the
221 trust and any digital assets in which the trust has a right or
222 interest, other than the content of electronic communications,
223 if the trustee gives the custodian:

224 (1) A written request for disclosure which is in physical
225 or electronic form;

226 (2) A certified copy of the trust instrument, or a
227 certification of trust under s. 736.1017;

228 (3) A certification by the trustee, under penalty of
229 perjury, that the trust exists and that the trustee is a
230 currently acting trustee of the trust; and

231 (4) If requested by the custodian:

232 (a) A number, username, address, or other unique subscriber
233 or account identifier assigned by the custodian to identify the
234 trust's account; or

235 (b) Evidence linking the account to the trust.

236 Section 14. Section 740.04, Florida Statutes, is created to
237 read:

238 740.04 Disclosure of digital assets to guardian of ward.—

239 (1) After an opportunity for a hearing under chapter 744,
240 the court may grant a guardian access to the digital assets of a
241 ward.

242 (2) Unless otherwise ordered by the court or directed by
243 the user, a custodian shall disclose to a guardian the catalog



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244 of electronic communications sent or received by the ward and
245 any digital assets in which the ward has a right or interest,
246 other than the content of electronic communications, if the
247 guardian gives the custodian:

248 (a) A written request for disclosure which is in physical
249 or electronic form;

250 (b) A certified copy of letters of plenary guardianship of
251 the property or the court order that gives the guardian
252 authority over the digital assets of the ward; and

253 (c) If requested by the custodian:

254 1. A number, username, address, or other unique subscriber
255 or account identifier assigned by the custodian to identify the
256 ward's account; or

257 2. Evidence linking the account to the ward.

258 (3) A guardian with general authority to manage the
259 property of a ward may request a custodian of the digital assets
260 of the ward to suspend or terminate an account of the ward for
261 good cause. A request made under this section must be
262 accompanied by a certified copy of the court order giving the
263 guardian authority over the ward's property.

264 Section 15. Section 740.05, Florida Statutes, is created to
265 read:

266 740.05 Fiduciary duty and authority.-

267 (1) The legal duties imposed on a fiduciary charged with
268 managing tangible property apply to the management of digital
269 assets, including:

270 (a) The duty of care;

271 (b) The duty of loyalty; and

272 (c) The duty of confidentiality.



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273 (2) A fiduciary's or designated recipient's authority with
274 respect to a digital asset of a user:

275 (a) Except as otherwise provided in s. 740.003, is subject
276 to the applicable terms-of-service agreement;

277 (b) Is subject to other applicable law, including copyright
278 law;

279 (c) In the case of a fiduciary, is limited by the scope of
280 the fiduciary's duties; and

281 (d) May not be used to impersonate the user.

282 (3) A fiduciary with authority over the tangible personal
283 property of a decedent, ward, principal, or settlor has the
284 right to access any digital asset in which the decedent, ward,
285 principal, or settlor had or has a right or interest and that is
286 not held by a custodian or subject to a terms-of-service
287 agreement.

288 (4) A fiduciary acting within the scope of the fiduciary's
289 duties is an authorized user of the property of the decedent,
290 ward, principal, or settlor for the purpose of applicable
291 computer fraud and unauthorized computer access laws, including
292 under chapter 815.

293 (5) A fiduciary with authority over the tangible personal
294 property of a decedent, ward, principal, or settlor:

295 (a) Has the right to access the property and any digital
296 asset stored in it; and

297 (b) Is an authorized user for the purpose of computer fraud
298 and unauthorized computer access laws, including under chapter
299 815.

300 (6) A custodian may disclose information in an account to a
301 fiduciary of the user when the information is required to



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302 terminate an account used to access digital assets licensed to
303 the user.

304 (7) A fiduciary of a user may request a custodian to
305 terminate the user's account. A request for termination must be
306 in writing, in paper or electronic form, and accompanied by:

307 (a) If the user is deceased, a certified copy of the death
308 certificate of the user;

309 (b) A certified copy of the letters of administration; the
310 order authorizing a curator or administrator ad litem; the order
311 of summary administration issued pursuant to chapter 735; or the
312 court order, power of attorney, or trust giving the fiduciary
313 authority over the account; and

314 (c) If requested by the custodian:

315 1. A number, username, address, or other unique subscriber
316 or account identifier assigned by the custodian to identify the
317 user's account;

318 2. Evidence linking the account to the user; or

319 3. A finding by the court that the user had a specific
320 account with the custodian, identifiable by the information
321 specified in subparagraph 1.

322 Section 16. Section 740.06, Florida Statutes, is created to
323 read:

324 740.06 Custodian compliance and immunity.-

325 (1) Not later than 60 days after receipt of the information
326 required under ss. 740.006-740.04, a custodian shall comply with
327 a request under this chapter from a fiduciary or designated
328 recipient to disclose digital assets or terminate an account. If
329 the custodian fails to comply, the fiduciary or designated
330 recipient may apply to the court for an order directing



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331 compliance.

332 (2) An order under subsection (1) directing compliance must
333 contain a finding that compliance is not in violation of 18
334 U.S.C. s. 2702.

335 (3) A custodian may notify a user that a request for
336 disclosure or to terminate an account was made under this
337 chapter.

338 (4) A custodian may deny a request under this chapter from
339 a fiduciary or designated recipient for disclosure of

340
341 ===== T I T L E A M E N D M E N T =====

342 And the title is amended as follows:

343 Delete lines 8 - 14

344 and insert:

345 to a designated recipient or to prohibit a custodian
346 from disclosing digital assets under certain
347 circumstances; providing that a specified user's
348 direction overrides a contrary provision in a terms-
349 of-service agreement under certain circumstances;
350 creating s. 740.004, F.S.; providing construction;
351 authorizing the modification of a fiduciary's or
352 designated recipient's access to digital assets under
353 certain circumstances;