

By Senator Hukill

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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. 740.002, F.S.; defining
6 terms; creating s. 740.003, F.S.; authorizing a user
7 to use an online tool to allow a custodian to disclose
8 or to prohibit a custodian from disclosing digital
9 assets under certain circumstances; providing that
10 specified user's direction overrides a contrary
11 provision in a terms-of-service agreement under
12 certain circumstances; creating s. 740.004, F.S.;
13 providing construction; authorizing the modification
14 of a fiduciary's assets under certain circumstances;
15 creating s. 740.005, F.S.; providing procedures for
16 the disclosure of digital assets; creating s. 740.006,
17 F.S.; requiring a custodian to disclose the content of
18 electronic communications of a deceased user under
19 certain circumstances; creating s. 740.007, F.S.;
20 requiring a custodian to disclose other digital assets
21 of a deceased user under certain circumstances;
22 creating s. 740.008, F.S.; requiring a custodian to
23 disclose the content of electronic communications of a
24 principal under certain circumstances; creating s.
25 740.009, F.S.; requiring a custodian to disclose other
26 digital assets of a principal under certain
27 circumstances; creating s. 740.01, F.S.; requiring a
28 custodian to disclose to a trustee who is the original
29 user the digital assets held in trust under certain

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30 circumstances; creating s. 740.02, F.S.; requiring a
31 custodian to disclose to a trustee who is not the
32 original user the content of electronic communications
33 held in trust under certain circumstances; creating s.
34 740.03, F.S.; requiring a custodian to disclose to a
35 trustee who is not the original user other digital
36 assets under certain circumstances; creating s.
37 740.04, F.S.; authorizing the court to grant a
38 guardian the right to access a ward's digital assets
39 under certain circumstances; requiring a custodian to
40 disclose to a guardian a specified catalog of
41 electronic communications and specified digital assets
42 of a ward under certain circumstances; creating s.
43 740.05, F.S.; imposing fiduciary duties; providing for
44 the rights and responsibilities of certain
45 fiduciaries; creating s. 740.06, F.S.; requiring
46 compliance of a custodian; providing construction;
47 providing for immunity from liability for a custodian
48 and its officers, employees, and agents acting in good
49 faith in complying with their duties; creating s.
50 740.07, F.S.; providing construction; creating s.
51 740.08, F.S.; providing applicability; creating s.
52 740.09, F.S.; providing severability; providing an
53 effective date.

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. The Division of Law Revision and Information is
58 directed to create chapter 740, Florida Statutes, consisting of

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59 ss. 740.001-740.09, Florida Statutes, to be entitled "Fiduciary
60 Access to Digital Assets."

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

63 740.001 Short title.—This chapter may be cited as the
64 "Florida Fiduciary Access to Digital Assets Act."

65 Section 3. Section 740.002, Florida Statutes, is created to
66 read:

67 740.002 Definitions.—As used in this chapter, the term:

68 (1) "Account" means an arrangement under a terms-of-service
69 agreement in which the custodian carries, maintains, processes,
70 receives, or stores a digital asset of the user or provides
71 goods or services to the user.

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

77 (3) "Carries" means to engage in the transmission of
78 electronic communications.

79 (4) "Catalog of electronic communications" means
80 information that identifies each person with which a user has
81 had an electronic communication, the time and date of the
82 communication, and the electronic address of the person.

83 (5) "Content of an electronic communication" means
84 information concerning the substance or meaning of the
85 communication which:

86 (a) Has been sent or received by a user;

87 (b) Is in electronic storage by a custodian providing an

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88 electronic communication service to the public or is carried or
89 maintained by a custodian providing a remote computing service
90 to the public; and

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

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

93 (7) "Custodian" means a person that carries, maintains,
94 processes, receives, or stores a digital asset of a user.

95 (8) "Designated recipient" means a person chosen by a user
96 through an online tool to administer digital assets of the user.

97 (9) "Digital asset" means an electronic record in which an
98 individual has a right or interest. The term does not include an
99 underlying asset or liability unless the asset or liability is
100 itself an electronic record.

101 (10) "Electronic" means relating to technology having
102 electrical, digital, magnetic, wireless, optical,
103 electromagnetic, or similar capabilities.

104 (11) "Electronic communication" has the same meaning as
105 provided in 18 U.S.C. s. 2510(12).

106 (12) "Electronic communication service" means a custodian
107 that provides to a user the ability to send or receive an
108 electronic communication.

109 (13) "Fiduciary" means an original, additional, or
110 successor personal representative, guardian, agent, or trustee.

111 (14) "Guardian" means a person who is appointed by the
112 court as guardian of the property of a minor or an incapacitated
113 individual. The term includes an original guardian, a co-
114 guardian, and a successor guardian, as well as a person
115 appointed by the court as an emergency temporary guardian of the
116 property.

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117 (15) "Information" means data, text, images, videos,
118 sounds, codes, computer programs, software, databases, or the
119 like.

120 (16) "Online tool" means an electronic service provided by
121 a custodian which allows the user, in an agreement distinct from
122 the terms-of-service agreement between the custodian and user,
123 to provide directions for disclosure or nondisclosure of digital
124 assets to a third person.

125 (17) "Person" means an individual, estate, trust, business
126 or nonprofit entity, public corporation, government or
127 governmental subdivision, agency, or instrumentality, or other
128 legal entity.

129 (18) "Personal representative" means the fiduciary
130 appointed by the court to administer the estate of a deceased
131 individual pursuant to letters of administration or an order
132 appointing a curator or administrator ad litem for the estate.
133 The term includes an original personal representative, a
134 copersonal representative, and a successor personal
135 representative, as well as a person who is entitled to receive
136 and collect a deceased individual's property pursuant to an
137 order of summary administration issued pursuant to chapter 735.

138 (19) "Power of attorney" means a record that grants an
139 agent authority to act in the place of a principal pursuant to
140 chapter 709.

141 (20) "Principal" means an individual who grants authority
142 to an agent in a power of attorney.

143 (21) "Record" means information that is inscribed on a
144 tangible medium or that is stored in an electronic or other
145 medium and is retrievable in perceivable form.

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146 (22) "Remote computing service" means a custodian that
147 provides to a user computer processing services or the storage
148 of digital assets by means of an electronic communications
149 system as defined in 18 U.S.C. s. 2510(14).

150 (23) "Terms-of-service agreement" means an agreement that
151 controls the relationship between a user and a custodian.

152 (24) "Trustee" means a fiduciary that holds legal title to
153 property under an agreement, declaration, or trust instrument
154 that creates a beneficial interest in the settlor or other
155 persons. The term includes an original trustee, a cotrustee, and
156 a successor trustee.

157 (25) "User" means a person that has an account with a
158 custodian.

159 (26) "Ward" means an individual for whom a guardian has
160 been appointed. The term includes an individual for whom an
161 application for the appointment of a guardian is pending.

162 (27) "Will" means an instrument admitted to probate,
163 including a codicil, executed by an individual in the manner
164 prescribed by the Florida Probate Code, which disposes of the
165 individual's property on or after his or her death. The term
166 includes an instrument that merely appoints a personal
167 representative or revokes or revises another will.

168 Section 4. Section 740.003, Florida Statutes, is created to
169 read:

170 740.003 User direction for disclosure of digital assets.—

171 (1) A user may use an online tool to direct the custodian
172 to disclose or not to disclose some or all of the user's digital
173 assets, including the content of electronic communications. If
174 the online tool allows the user to modify or delete a direction

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175 at all times, a direction regarding disclosure using an online
176 tool overrides a contrary direction by the user in a will,
177 trust, power of attorney, or other record.

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

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

188 Section 5. Section 740.004, Florida Statutes, is created to
189 read:

190 740.004 Terms-of-service agreement preserved.—

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

194 (2) This chapter does not give a fiduciary any new or
195 expanded rights other than those held by the user for whom, or
196 for whose estate or trust, the fiduciary acts or represents.

197 (3) A fiduciary's access to digital assets may be modified
198 or eliminated by a user, by federal law, or by a terms-of-
199 service agreement if the user has not provided direction under
200 s. 740.003.

201 Section 6. Section 740.005, Florida Statutes, is created to
202 read:

203 740.005 Procedure for disclosing digital assets.—

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

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

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

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

216 (2) A custodian may assess a reasonable administrative
217 charge for the cost of disclosing digital assets under this
218 chapter.

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

221 (4) If a user directs or a fiduciary requests a custodian
222 to disclose under this chapter some, but not all, of the user's
223 digital assets to the fiduciary or a designated recipient, the
224 custodian is not required to disclose the assets if segregation
225 of the assets would impose an undue burden on the custodian. If
226 the custodian believes the direction or request imposes an undue
227 burden, the custodian or the fiduciary may seek an order from
228 the court to disclose:

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

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

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

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233 Section 7. Section 740.006, Florida Statutes, is created to
234 read:

235 740.006 Disclosure of content of electronic communications
236 of deceased user.—If a deceased user consented to or a court
237 directs the disclosure of the content of electronic
238 communications of the user, the custodian shall disclose to the
239 personal representative of the estate of the user the content of
240 an electronic communication sent or received by the user if the
241 personal representative gives to the custodian:

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

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

245 (3) A certified copy of the letters of administration, the
246 order authorizing a curator or administrator ad litem, the order
247 of summary administration issued pursuant to chapter 735, or
248 other court order;

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

253 (5) If requested by the custodian:

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

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

258 (c) A finding by the court that:

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

261 2. Disclosure of the content of electronic communications

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262 of the user would not violate 18 U.S.C. s. 2701 et seq., 47
263 U.S.C. s. 222, or other applicable law;

264 3. Unless the user provided direction using an online tool,
265 the user consented to disclosure of the content of electronic
266 communications; or

267 4. Disclosure of the content of electronic communications
268 of the user is reasonably necessary for the administration of
269 the estate.

270 Section 8. Section 740.007, Florida Statutes, is created to
271 read:

272 740.007 Disclosure of other digital assets of deceased
273 user.—Unless a user prohibited disclosure of digital assets or
274 the court directs otherwise, a custodian shall disclose to the
275 personal representative of the estate of a deceased user a
276 catalog of electronic communications sent or received by the
277 user and digital assets of the user, except the content of
278 electronic communications, if the personal representative gives
279 to the custodian:

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

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

283 (3) A certified copy of the letters of administration, the
284 order authorizing a curator or administrator ad litem, the order
285 of summary administration issued pursuant to chapter 735, or
286 other court order; and

287 (4) If requested by the custodian:

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

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- 291 (b) Evidence linking the account to the user;
- 292 (c) An affidavit stating that disclosure of the user's
- 293 digital assets is reasonably necessary for the administration of
- 294 the estate; or
- 295 (d) An order of the court finding that:
- 296 1. The user had a specific account with the custodian,
- 297 identifiable by information specified in paragraph (a); or
- 298 2. Disclosure of the user's digital assets is reasonably
- 299 necessary for the administration of the estate.

300 Section 9. Section 740.008, Florida Statutes, is created to
 301 read:

302 740.008 Disclosure of content of electronic communications
 303 of principal.—To the extent a power of attorney expressly grants
 304 an agent authority over the content of electronic communications
 305 sent or received by the principal and unless directed otherwise
 306 by the principal or the court, a custodian shall disclose to the
 307 agent the content if the agent gives to the custodian:

- 308 (1) A written request for disclosure which is in physical
- 309 or electronic form;
- 310 (2) An original or copy of the power of attorney expressly
- 311 granting the agent authority over the content of electronic
- 312 communications of the principal;
- 313 (3) A certification by the agent, under penalty of perjury,
- 314 that the power of attorney is in effect; and
- 315 (4) If requested by the custodian:
- 316 (a) A number, username, address, or other unique subscriber
- 317 or account identifier assigned by the custodian to identify the
- 318 principal's account; or
- 319 (b) Evidence linking the account to the principal.

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320 Section 10. Section 740.009, Florida Statutes, is created
321 to read:

322 740.009 Disclosure of other digital assets of principal.—
323 Unless otherwise ordered by the court, directed by the
324 principal, or provided by a power of attorney, a custodian shall
325 disclose to an agent with specific authority over the digital
326 assets or with general authority to act on behalf of the
327 principal a catalog of electronic communications sent or
328 received by the principal, and digital assets of the principal,
329 except the content of electronic communications, if the agent
330 gives the custodian:

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

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

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

338 (4) If requested by the custodian:

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

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

343 Section 11. Section 740.01, Florida Statutes, is created to
344 read:

345 740.01 Disclosure of digital assets held in trust when
346 trustee is the original user.—Unless otherwise ordered by the
347 court or provided in a trust, a custodian shall disclose to a
348 trustee that is an original user of an account any digital asset

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349 of the account held in trust, including a catalog of electronic
350 communications of the trustee and the content of electronic
351 communications.

352 Section 12. Section 740.02, Florida Statutes, is created to
353 read:

354 740.02 Disclosure of content of electronic communications
355 held in trust when trustee is not the original user.—Unless
356 otherwise ordered by the court, directed by the user, or
357 provided in a trust, a custodian shall disclose to a trustee
358 that is not an original user of an account the content of an
359 electronic communication sent or received by an original or
360 successor user and carried, maintained, processed, received, or
361 stored by the custodian in the account of the trust if the
362 trustee gives the custodian:

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

365 (2) A certified copy of the trust instrument, or a
366 certification of trust under s. 736.1017, which includes consent
367 to disclosure of the content of electronic communications to the
368 trustee;

369 (3) A certification by the trustee, under penalty of
370 perjury, that the trust exists and that the trustee is a
371 currently acting trustee of the trust; and

372 (4) If requested by the custodian:

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

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

377 Section 13. Section 740.03, Florida Statutes, is created to

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378 read:

379 740.03 Disclosure of other digital assets held in trust
380 when trustee is not the original user.—Unless otherwise ordered
381 by the court, directed by the user, or provided in a trust, a
382 custodian shall disclose to a trustee that is not an original
383 user of an account, a catalog of electronic communications sent
384 or received by an original or successor user and stored,
385 carried, or maintained by the custodian in an account of the
386 trust and any digital assets in which the trust has a right or
387 interest, other than the content of electronic communications,
388 if the trustee gives the custodian:

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

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

393 (3) A certification by the trustee, under penalty of
394 perjury, that the trust exists and that the trustee is a
395 currently acting trustee of the trust; and

396 (4) If requested by the custodian:

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

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

401 Section 14. Section 740.04, Florida Statutes, is created to
402 read:

403 740.04 Disclosure of digital assets to guardian of ward.—

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

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407 (2) Unless otherwise ordered by the court or directed by
408 the user, a custodian shall disclose to a guardian the catalog
409 of electronic communications sent or received by the ward and
410 any digital assets in which the ward has a right or interest,
411 other than the content of electronic communications, if the
412 guardian gives the custodian:

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

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

418 (c) If requested by the custodian:

419 1. A number, username, address, or other unique subscriber
420 or account identifier assigned by the custodian to identify the
421 ward's account; or

422 2. Evidence linking the account to the ward.

423 (3) A guardian with general authority to manage the
424 property of a ward may request a custodian of the digital assets
425 of the ward to suspend or terminate an account of the ward for
426 good cause. A request made under this section must be
427 accompanied by a certified copy of the court order giving the
428 guardian authority over the ward's property.

429 Section 15. Section 740.05, Florida Statutes, is created to
430 read:

431 740.05 Fiduciary duty and authority.—

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

435 (a) The duty of care;

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- 436 (b) The duty of loyalty; and
437 (c) The duty of confidentiality.
438 (2) A fiduciary's authority with respect to a digital asset
439 of a user:
440 (a) Except as otherwise provided in s. 740.003, is subject
441 to the applicable terms-of-service agreement;
442 (b) Is subject to other applicable law, including copyright
443 law;
444 (c) Is limited by the scope of the fiduciary's duties; and
445 (d) May not be used to impersonate the user.
446 (3) A fiduciary with authority over the tangible personal
447 property of a decedent, ward, principal, or settlor has the
448 right to access any digital asset in which the decedent, ward,
449 principal, or settlor had or has a right or interest and that is
450 not held by a custodian or subject to a terms-of-service
451 agreement.
452 (4) A fiduciary acting within the scope of the fiduciary's
453 duties is an authorized user of the property of the decedent,
454 ward, principal, or settlor for the purpose of applicable
455 computer fraud and unauthorized computer access laws, including
456 under chapter 815.
457 (5) A fiduciary with authority over the tangible personal
458 property of a decedent, ward, principal, or settlor:
459 (a) Has the right to access the property and any digital
460 asset stored in it; and
461 (b) Is an authorized user for the purpose of computer fraud
462 and unauthorized computer access laws, including under chapter
463 815.
464 (6) A custodian may disclose information in an account to a

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465 fiduciary of the user when the information is required to
466 terminate an account used to access digital assets licensed to
467 the user.

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

471 (a) If the user is deceased, a certified copy of the death
472 certificate of the user;

473 (b) A certified copy of the letters of administration; the
474 order authorizing a curator or administrator ad litem; the order
475 of summary administration issued pursuant to chapter 735; or the
476 court order, power of attorney, or trust giving the fiduciary
477 authority over the account; and

478 (c) If requested by the custodian:

479 1. A number, username, address, or other unique subscriber
480 or account identifier assigned by the custodian to identify the
481 user's account;

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

483 3. A finding by the court that the user had a specific
484 account with the custodian, identifiable by the information
485 specified in subparagraph 1.

486 Section 16. Section 740.06, Florida Statutes, is created to
487 read:

488 740.06 Custodian compliance and immunity.—

489 (1) Not later than 60 days after receipt of the information
490 required under ss. 740.006-740.04, a custodian shall comply with
491 a request under this chapter from a fiduciary or designated
492 recipient to disclose digital assets or terminate an account. If
493 the custodian fails to comply, the fiduciary or designated

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494 representative may apply to the court for an order directing
495 compliance.

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

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

502 (4) A custodian may deny a request under this chapter from
503 a fiduciary or designated representative for disclosure of
504 digital assets or to terminate an account if the custodian is
505 aware of any lawful access to the account following the receipt
506 of the fiduciary's request.

507 (5) This chapter does not limit a custodian's ability to
508 obtain or require a fiduciary or designated recipient requesting
509 disclosure or termination under this chapter to obtain a court
510 order that:

511 (a) Specifies that an account belongs to the ward or
512 principal;

513 (b) Specifies that there is sufficient consent from the
514 ward or principal to support the requested disclosure; and

515 (c) Contains a finding required by a law other than this
516 chapter.

517 (6) A custodian and its officers, employees, and agents are
518 immune from liability for an act or omission done in good faith
519 in compliance with this chapter.

520 Section 17. Section 740.07, Florida Statutes, is created to
521 read:

522 740.07 Relation to Electronic Signatures in Global and

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523 National Commerce Act.—This chapter modifies, limits, and
524 supersedes the Electronic Signatures in Global and National
525 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
526 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
527 or authorize electronic delivery of any of the notices described
528 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

529 Section 18. Section 740.08, Florida Statutes, is created to
530 read:

531 740.08 Applicability.—

532 (1) Subject to subsection (3), this chapter applies to:

533 (a) A fiduciary acting under a will, trust, or power of
534 attorney executed before, on, or after July 1, 2016;

535 (b) A personal representative acting for a decedent who
536 died before, on, or after July 1, 2016;

537 (c) A guardian appointed through a guardianship proceeding,
538 whether pending in a court or commenced before, on, or after
539 July 1, 2016; and

540 (d) A trustee acting under a trust created before, on, or
541 after July 1, 2016.

542 (2) This chapter applies to a custodian if the user resides
543 in this state or resided in this state at the time of the user's
544 death.

545 (3) This chapter does not apply to a digital asset of an
546 employer used by an employee in the ordinary course of the
547 employer's business.

548 Section 19. Section 740.09, Florida Statutes, is created to
549 read:

550 740.09 Severability.—If any provision of this chapter or
551 its application to any person or circumstance is held invalid,

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552 the invalidity does not affect other provisions or applications
553 of this chapter which can be given effect without the invalid
554 provision or application, and to this end the provisions of this
555 chapter are severable.

556 Section 20. This act shall take effect July 1, 2016.