

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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WITHDRAWN _____ (Y/N)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

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

3
4 **Amendment (with title amendment)**

5 Remove lines 171-503 and insert:

6 to disclose to a designated recipient or not to disclose some or
7 all of the user's digital assets, including the content of
8 electronic communications. If the online tool allows the user to
9 modify or delete a direction at all times, a direction regarding
10 disclosure using an online tool overrides a contrary direction
11 by the user in a will, trust, power of attorney, or other
12 record.

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

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18 or received by the user, in a will, trust, power of attorney, or
19 other record.

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

24 Section 5. Section 740.004, Florida Statutes, is created
25 to read:

26 740.004 Terms-of-service agreement preserved.-

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

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

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

38 Section 6. Section 740.005, Florida Statutes, is created
39 to read:

40 740.005 Procedure for disclosing digital assets.-

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

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

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

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

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

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

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

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

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

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

70 Section 7. Section 740.006, Florida Statutes, is created
71 to read:

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

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

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

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

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

90 (5) If requested by the custodian:

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

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

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95 (c) A finding by the court that:

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

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

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

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

107 Section 8. Section 740.007, Florida Statutes, is created
108 to read:

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

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

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

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

124 (4) If requested by the custodian:

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

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

129 (c) An affidavit stating that disclosure of the user's
130 digital assets is reasonably necessary for the administration of
131 the estate; or

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

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

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

137 Section 9. Section 740.008, Florida Statutes, is created
138 to read:

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

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

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

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

152 (4) If requested by the custodian:

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

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

157 Section 10. Section 740.009, Florida Statutes, is created
158 to read:

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

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

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

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

175 (4) If requested by the custodian:

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

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

180 Section 11. Section 740.01, Florida Statutes, is created
181 to read:

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

189 Section 12. Section 740.02, Florida Statutes, is created
190 to read:

191 740.02 Disclosure of content of electronic communications
192 held in trust when trustee is not the original user.—Unless
193 otherwise ordered by the court, directed by the user, or
194 provided in a trust, a custodian shall disclose to a trustee
195 that is not an original user of an account the content of an

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196 electronic communication sent or received by an original or
197 successor user and carried, maintained, processed, received, or
198 stored by the custodian in the account of the trust if the
199 trustee gives the custodian:

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

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

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

209 (4) If requested by the custodian:

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

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

214 Section 13. Section 740.03, Florida Statutes, is created
215 to read:

216 740.03 Disclosure of other digital assets held in trust
217 when trustee is not the original user.—Unless otherwise ordered
218 by the court, directed by the user, or provided in a trust, a
219 custodian shall disclose to a trustee that is not an original
220 user of an account, a catalog of electronic communications sent
221 or received by an original or successor user and stored,

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222 carried, or maintained by the custodian in an account of the
223 trust and any digital assets in which the trust has a right or
224 interest, other than the content of electronic communications,
225 if the trustee gives the custodian:

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

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

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

233 (4) If requested by the custodian:

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

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

238 Section 14. Section 740.04, Florida Statutes, is created
239 to read:

240 740.04 Disclosure of digital assets to guardian of ward.-

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

244 (2) Unless otherwise ordered by the court or directed by
245 the user, a custodian shall disclose to a guardian the catalog
246 of electronic communications sent or received by the ward and
247 any digital assets in which the ward has a right or interest,

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248 other than the content of electronic communications, if the
249 guardian gives the custodian:

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

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

255 (c) If requested by the custodian:

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

259 2. Evidence linking the account to the ward.

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

266 Section 15. Section 740.05, Florida Statutes, is created
267 to read:

268 740.05 Fiduciary duty and authority.—

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

272 (a) The duty of care;

273 (b) The duty of loyalty; and

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- 274 (c) The duty of confidentiality.
- 275 (2) A fiduciary's or designated recipient's authority with
276 respect to a digital asset of a user:
- 277 (a) Except as otherwise provided in s. 740.003, is subject
278 to the applicable terms-of-service agreement;
- 279 (b) Is subject to other applicable law, including
280 copyright law;
- 281 (c) In the case of a fiduciary, is limited by the scope of
282 the fiduciary's duties; and
- 283 (d) May not be used to impersonate the user.
- 284 (3) A fiduciary with authority over the tangible personal
285 property of a decedent, ward, principal, or settlor has the
286 right to access any digital asset in which the decedent, ward,
287 principal, or settlor had or has a right or interest and that is
288 not held by a custodian or subject to a terms-of-service
289 agreement.
- 290 (4) A fiduciary acting within the scope of the fiduciary's
291 duties is an authorized user of the property of the decedent,
292 ward, principal, or settlor for the purpose of applicable
293 computer fraud and unauthorized computer access laws, including
294 under chapter 815.
- 295 (5) A fiduciary with authority over the tangible personal
296 property of a decedent, ward, principal, or settlor:
- 297 (a) Has the right to access the property and any digital
298 asset stored in it; and

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

302 (6) A custodian may disclose information in an account to
303 a fiduciary of the user when the information is required to
304 terminate an account used to access digital assets licensed to
305 the user.

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

309 (a) If the user is deceased, a certified copy of the death
310 certificate of the user;

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

316 (c) If requested by the custodian:

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

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

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

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324 Section 16. Section 740.06, Florida Statutes, is created
325 to read:

326 740.06 Custodian compliance and immunity.-

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

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

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

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

342
343 -----

344 **T I T L E A M E N D M E N T**

345 Remove lines 8-14 and insert:

346 to a designated recipient or to prohibit a custodian
347 from disclosing digital assets under certain
348 circumstances; providing that a specified user's
349 direction overrides a contrary provision in a terms-

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350 of-service agreement under certain circumstances;
351 creating s. 740.004, F.S.; providing construction;
352 authorizing the modification of a fiduciary's or
353 designated recipient's access to digital assets under
354 certain circumstances;