

By the Committee on Judiciary; and Senator Hukill

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A bill to be entitled

An act relating to digital assets; providing a directive to the Division of Law Revision and Information; creating s. 740.001, F.S.; providing a short title; creating s. 740.002, F.S.; defining terms; creating s. 740.003, F.S.; authorizing a user to use an online tool to allow a custodian to disclose or to prohibit a custodian from disclosing digital assets under certain circumstances; providing that specified user's direction overrides a contrary provision in a terms-of-service agreement under certain circumstances; creating s. 740.004, F.S.; providing construction; authorizing the modification of a fiduciary's assets under certain circumstances; creating s. 740.005, F.S.; providing procedures for the disclosure of digital assets; creating s. 740.006, F.S.; requiring a custodian to disclose the content of electronic communications of a deceased user under certain circumstances; creating s. 740.007, F.S.; requiring a custodian to disclose other digital assets of a deceased user under certain circumstances; creating s. 740.008, F.S.; requiring a custodian to disclose the content of electronic communications of a principal under certain circumstances; creating s. 740.009, F.S.; requiring a custodian to disclose other digital assets of a principal under certain circumstances; creating s. 740.01, F.S.; requiring a custodian to disclose to a trustee who is the original user the digital assets held in trust under certain

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circumstances; creating s. 740.02, F.S.; requiring a custodian to disclose to a trustee who is not the original user the content of electronic communications held in trust under certain circumstances; creating s. 740.03, F.S.; requiring a custodian to disclose to a trustee who is not the original user other digital assets under certain circumstances; creating s. 740.04, F.S.; authorizing the court to grant a guardian the right to access a ward's digital assets under certain circumstances; requiring a custodian to disclose to a guardian a specified catalog of electronic communications and specified digital assets of a ward under certain circumstances; creating s. 740.05, F.S.; imposing fiduciary duties; providing for the rights and responsibilities of certain fiduciaries; creating s. 740.06, F.S.; requiring compliance of a custodian; providing construction; providing for immunity from liability for a custodian and its officers, employees, and agents acting in good faith in complying with their duties; creating s. 740.07, F.S.; providing construction; creating s. 740.08, F.S.; providing applicability; creating s. 740.09, F.S.; providing severability; providing an effective date.

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.

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

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

169 740.003 User direction for disclosure of digital assets.—

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

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175 tool overrides a contrary direction by the user in a will,
176 trust, power of attorney, or other record.

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

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

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

189 740.004 Terms-of-service agreement preserved.—

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

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

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

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

202 740.005 Procedure for disclosing digital assets.—

203 (1) When disclosing the digital assets of a user under this

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chapter, the custodian may, at its sole discretion:

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

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

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

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

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

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

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

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

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

Section 7. Section 740.006, Florida Statutes, is created to

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233 read:

234 740.006 Disclosure of content of electronic communications
235 of deceased user.-If a deceased user consented to or a court
236 directs the disclosure of the content of electronic
237 communications of the user, the custodian shall disclose to the
238 personal representative of the estate of the user the content of
239 an electronic communication sent or received by the user if the
240 personal representative gives to the custodian:

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

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

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

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

252 (5) If requested by the custodian:

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

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

257 (c) A finding by the court that:

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

260 2. Disclosure of the content of electronic communications
261 of the user would not violate 18 U.S.C. s. 2701 et seq., 47

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262 U.S.C. s. 222, or other applicable law;

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

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

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

271 740.007 Disclosure of other digital assets of deceased
272 user.—Unless a user prohibited disclosure of digital assets or
273 the court directs otherwise, a custodian shall disclose to the
274 personal representative of the estate of a deceased user a
275 catalog of electronic communications sent or received by the
276 user and digital assets of the user, except the content of
277 electronic communications, if the personal representative gives
278 to the custodian:

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

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

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

286 (4) If requested by the custodian:

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

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

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291 (c) An affidavit stating that disclosure of the user's
292 digital assets is reasonably necessary for the administration of
293 the estate; or

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

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

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

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

301 740.008 Disclosure of content of electronic communications
302 of principal.—To the extent a power of attorney expressly grants
303 an agent authority over the content of electronic communications
304 sent or received by the principal and unless directed otherwise
305 by the principal or the court, a custodian shall disclose to the
306 agent the content if the agent gives to the custodian:

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

309 (2) An original or copy of the power of attorney expressly
310 granting the agent authority over the content of electronic
311 communications of the principal;

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

314 (4) If requested by the custodian:

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

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

319 Section 10. Section 740.009, Florida Statutes, is created

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to read:

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

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

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

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

(4) If requested by the custodian:

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

(b) Evidence linking the account to the principal.

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

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

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349 communications of the trustee and the content of electronic
350 communications.

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

353 740.02 Disclosure of content of electronic communications
354 held in trust when trustee is not the original user.—Unless
355 otherwise ordered by the court, directed by the user, or
356 provided in a trust, a custodian shall disclose to a trustee
357 that is not an original user of an account the content of an
358 electronic communication sent or received by an original or
359 successor user and carried, maintained, processed, received, or
360 stored by the custodian in the account of the trust if the
361 trustee gives the custodian:

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

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

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

371 (4) If requested by the custodian:

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

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

376 Section 13. Section 740.03, Florida Statutes, is created to
377 read:

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378 740.03 Disclosure of other digital assets held in trust
379 when trustee is not the original user.—Unless otherwise ordered
380 by the court, directed by the user, or provided in a trust, a
381 custodian shall disclose to a trustee that is not an original
382 user of an account, a catalog of electronic communications sent
383 or received by an original or successor user and stored,
384 carried, or maintained by the custodian in an account of the
385 trust and any digital assets in which the trust has a right or
386 interest, other than the content of electronic communications,
387 if the trustee gives the custodian:

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

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

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

395 (4) If requested by the custodian:

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

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

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

402 740.04 Disclosure of digital assets to guardian of ward.—

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

406 (2) Unless otherwise ordered by the court or directed by

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the user, a custodian shall disclose to a guardian the catalog of electronic communications sent or received by the ward and any digital assets in which the ward has a right or interest, other than the content of electronic communications, if the guardian gives the custodian:

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

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

(c) If requested by the custodian:

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

2. Evidence linking the account to the ward.

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

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

740.05 Fiduciary duty and authority.—

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

(a) The duty of care;

(b) The duty of loyalty; and

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436 (c) The duty of confidentiality.

437 (2) A fiduciary's authority with respect to a digital asset
438 of a user:

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

441 (b) Is subject to other applicable law, including copyright
442 law;

443 (c) Is limited by the scope of the fiduciary's duties; and

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

445 (3) A fiduciary with authority over the tangible personal
446 property of a decedent, ward, principal, or settlor has the
447 right to access any digital asset in which the decedent, ward,
448 principal, or settlor had or has a right or interest and that is
449 not held by a custodian or subject to a terms-of-service
450 agreement.

451 (4) A fiduciary acting within the scope of the fiduciary's
452 duties is an authorized user of the property of the decedent,
453 ward, principal, or settlor for the purpose of applicable
454 computer fraud and unauthorized computer access laws, including
455 under chapter 815.

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

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

460 (b) Is an authorized user for the purpose of computer fraud
461 and unauthorized computer access laws, including under chapter
462 815.

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

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465 terminate an account used to access digital assets licensed to
466 the user.

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

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

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

477 (c) If requested by the custodian:

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

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

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

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

487 740.06 Custodian compliance and immunity.—

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

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494 compliance.

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

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

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

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

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

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

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

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

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

521 740.07 Relation to Electronic Signatures in Global and
522 National Commerce Act.—This chapter modifies, limits, and

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

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

530 740.08 Applicability.—

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

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

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

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

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

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

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

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

549 740.09 Severability.—If any provision of this chapter or
550 its application to any person or circumstance is held invalid,
551 the invalidity does not affect other provisions or applications

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552 of this chapter which can be given effect without the invalid
553 provision or application, and to this end the provisions of this
554 chapter are severable.

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