

**Senate File 333 - Enrolled**

Senate File 333

AN ACT

RELATING TO A FIDUCIARY'S ACCESS TO DIGITAL ASSETS AND INCLUDING  
APPLICABILITY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. **633.90 Power of a fiduciary to  
access digital assets.**

Except as modified by a court order or limited in the  
instrument creating the fiduciary relationship, a fiduciary may  
exercise all rights and powers granted to such fiduciary under  
chapter 638.

Sec. 2. Section 633A.4402, Code 2017, is amended by adding  
the following new subsection:

NEW SUBSECTION. 33. Exercise all rights and powers granted  
to a trustee under chapter 638.

Sec. 3. Section 633B.201, subsection 1, Code 2017, is  
amended by adding the following new paragraph:

NEW PARAGRAPH. *i.* Exercise all rights and powers granted  
to an agent under chapter 638.

Sec. 4. NEW SECTION. **638.1 Short title.**

This chapter may be cited as the "*Iowa Uniform Fiduciary  
Access to Digital Assets Act*".

Sec. 5. NEW SECTION. **638.2 Definitions.**

As used in this chapter, unless the context otherwise  
requires:

1. "*Account*" means an arrangement under a terms-of-service  
agreement in which a custodian carries, maintains, processes,

receives, or stores a digital asset of the user or provides goods or services to the user.

2. "*Agent*" means an attorney-in-fact granted authority under a durable or nondurable power of attorney under chapter 633B.

3. "*Carries*" means engages in the transmission of an electronic communication.

4. "*Catalogue 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. "*Conservator*" means the same as defined in section 633.3. "*Conservator*" includes a person appointed to have the custody and control of the property of a ward in a limited conservatorship unless otherwise provided by order of the court.

6. "*Content of an electronic communication*" means information concerning the substance or meaning of the communication to which all of the following apply:

a. The communication has been sent or received by a user.

b. The communication is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public.

c. The communication is not readily accessible to the public.

7. "*Court*" means a district court in this state.

8. "*Custodian*" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

9. "*Designated recipient*" means a person chosen by a user using an online tool to administer digital assets of the user.

10. "*Digital asset*" means an electronic record in which an individual has a right or interest. "*Digital asset*" does not include an underlying asset or liability unless the asset or liability is itself an electronic record. "*Digital asset*" does not include health information or individually identifiable health information as those terms are defined in the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

11. "*Electronic*" means relating to technology having

electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

12. *“Electronic communication”* has the meaning set forth in 18 U.S.C. §2510(12).

13. *“Electronic-communication service”* means a custodian that provides to a user the ability to send or receive an electronic communication.

14. *“Fiduciary”* means a personal representative, conservator, guardian, agent, or trustee.

15. *“Guardian”* means the same as defined in section 633.3. *“Guardian”* includes a person appointed to have the custody and care of the person of the ward in a limited guardianship unless otherwise provided by order of the court.

16. *“Information”* means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

17. *“Online tool”* means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

18. *“Person”* means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.

19. *“Personal representative”* means the same as defined in section 633.3.

20. *“Power of attorney”* means the same as defined in section 633B.102.

21. *“Principal”* means the same as defined in section 633B.102.

22. *“Record”* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

23. *“Remote-computing service”* means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. §2510(14).

24. *“Terms-of-service agreement”* means an agreement that controls the relationship between a user and a custodian.

25. *Trustee* means the same as defined in section 633.3 or 633A.1102.

26. *User* means a person that has an account with a custodian.

27. *Ward* means an individual for whom a conservator or guardian has been appointed. *Ward* includes an individual for whom an application for the appointment of a conservator or guardian is pending and for which a court order authorizing access under this chapter has been granted.

28. *Will* means the same as defined in section 633.3.

**Sec. 6. NEW SECTION. 638.3 Applicability.**

1. This chapter applies to all of the following:

*a.* A fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this Act.

*b.* A personal representative acting for a decedent who died before, on, or after the effective date of this Act.

*c.* A conservator or guardian acting for a ward on or after the effective date of this Act.

*d.* A trustee acting under a trust created before, on, or after the effective date of this Act.

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

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

**Sec. 7. NEW SECTION. 638.4 User direction for disclosure of digital assets.**

1. A user may use an online tool to direct the custodian to disclose to the 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 any time, 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.

2. If a user has not used an online tool to give direction under subsection 1, or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust,

power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

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

**Sec. 8. NEW SECTION. 638.5 Terms-of-service agreement.**

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

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

3. A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under section 638.4.

**Sec. 9. NEW SECTION. 638.6 Procedure for disclosing digital assets.**

1. When disclosing digital assets of a user under this chapter, the custodian may at its sole discretion do any of the following:

*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.

*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, was competent, and had 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 need not disclose under this chapter a

digital asset deleted by a user.

4. If a user directs or a fiduciary requests a custodian to disclose some, but not all, of the user's digital assets, the custodian need not 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 fiduciary may seek an order from the court to disclose any of the following:

- a. A subset of the user's digital assets limited by date.
- b. All of the user's digital assets to the fiduciary or designated recipient.
- c. None of the user's digital assets.
- d. All of the user's digital assets to the court for review in camera.

Sec. 10. NEW SECTION. 638.7 Disclosure of content of electronic communications of deceased user.

If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.
2. A certified copy of the death certificate of the user.
3. A certified copy of the letters of appointment of the personal representative, an original affidavit made pursuant to section 633.356, or a file-stamped copy of the court order authorizing the personal representative to administer the user's estate.
4. Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications.
5. If requested by the custodian, any of the following:
  - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account.
  - b. Evidence linking the account to the user.

*c.* A finding by the court of any of the following:

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

(2) Disclosure of the content of electronic communications of the user would not violate 18 U.S.C. §2701 et seq., 47 U.S.C. §222, or other applicable law.

(3) Unless the user provided direction using an online tool, that the user consented to disclosure of the content of electronic communications.

(4) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

**Sec. 11. NEW SECTION. 638.8 Disclosure of other digital assets of deceased user.**

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the personal representative gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.

2. A certified copy of the death certificate of the user.

3. A certified copy of the letters of appointment of the personal representative, an original affidavit made pursuant to section 633.356, or a file-stamped copy of the court order authorizing the personal representative to administer the user's estate.

4. If requested by the custodian, any of the following:

*a.* A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account.

*b.* Evidence linking the account to the user.

*c.* An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate.

*d.* A finding by the court of any of the following:

(1) The user had a specific account with the custodian,

identifiable by the information specified in paragraph "a".

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

**Sec. 12. NEW SECTION. 638.9 Disclosure of content of electronic communications of principal.**

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.
2. An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal.
3. A certification by the agent, under penalty of perjury, that the power of attorney is in effect. The certification form provided in section 633B.302 shall satisfy the requirement of this subsection.
4. If requested by the custodian, any of the following:
  - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account.
  - b. Evidence linking the account to the principal.

**Sec. 13. NEW SECTION. 638.10 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 digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.
2. An original or a copy of the power of attorney that 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.

4. If requested by the custodian, any of the following:

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

b. Evidence linking the account to the principal.

**Sec. 14. NEW SECTION. 638.11 Disclosure of digital assets held in trust when trustee is 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 catalogue of electronic communications of the trustee and the content of electronic communications.

**Sec. 15. NEW SECTION. 638.12 Disclosure of contents of electronic communications held in trust when trustee not original user.**

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.

2. A certified copy of the trust instrument or a certification of trust under section 633A.4604 that includes consent to disclosure of the content of electronic communications to the trustee.

3. A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.

4. If requested by the custodian, any of the following:

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

b. Evidence linking the account to the trust.

**Sec. 16. NEW SECTION. 638.13 Disclosure of other digital assets held in trust when trustee not original user.**

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.
2. A certified copy of the trust instrument or a certification of trust under section 633A.4604.
3. A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.
4. If requested by the custodian, any of the following:
  - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account.
  - b. Evidence linking the account to the trust.

**Sec. 17. NEW SECTION. 638.14 Disclosure of digital assets to conservator or guardian of a ward.**

1. After an opportunity for a hearing to all interested parties, the court may grant a conservator or guardian access to the digital assets of a ward.
2. Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator or guardian the catalogue of electronic communications sent or received by a ward and any digital assets, other than the content of electronic communications, in which the ward has a right or interest if the conservator or guardian gives the custodian all of the following:
  - a. A written request for disclosure in physical or electronic form.
  - b. A file-stamped copy of the court order that gives the conservator or guardian authority over the digital assets of

the ward.

*c.* If requested by the custodian, any of the following:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the ward.

(2) Evidence linking the account to the ward.

3. If the conservatorship or guardianship is not limited, the conservator or guardian 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 file-stamped copy of the court order establishing the conservatorship or guardianship.

Sec. 18. NEW SECTION. 638.15 **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 all of the following:

- a.* The duty of care.
- b.* The duty of loyalty.
- c.* The duty of confidentiality.

2. All of the following apply to a fiduciary's or a designated recipient's authority with respect to a digital asset of a user:

*a.* Except as otherwise provided in section 638.4, the fiduciary's or designated recipient's authority is subject to the applicable terms of service.

*b.* The fiduciary's or designated recipient's authority is subject to other applicable law, including copyright law.

*c.* In the case of a fiduciary, the fiduciary's authority is limited by the scope of the fiduciary's duties.

*d.* The fiduciary's or designated recipient's authority shall not be used to impersonate the user.

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

4. A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, ward, principal, or settlor for the purpose of applicable

computer-fraud and unauthorized-computer-access laws, including section 716.6B.

5. A fiduciary with authority over the tangible, personal property of a decedent, ward, principal, or settlor possesses all of the following authority:

*a.* Has the right to access the property and any digital asset stored in the property.

*b.* Is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including section 716.6B.

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

7. A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by all of the following:

*a.* If the user is deceased, a certified copy of the death certificate of the user.

*b.* A certified copy of the letters of appointment of the personal representative, an original affidavit made pursuant to section 633.356, a file-stamped copy of the court order authorizing the personal representative to administer the user's estate, power of attorney, or trust, including a certification of trust, giving the fiduciary authority over the account.

*c.* If requested by the custodian, any of the following:

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

(2) Evidence linking the account to the user.

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

**Sec. 19. NEW SECTION. 638.16 Custodian compliance and immunity.**

1. Not later than sixty days after receipt of the information required under sections 638.7 through 638.15, a

custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

2. An order under subsection 1 directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. §2702.

3. A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

4. A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

5. This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order which finds all of the following:

- a. That the account belongs to the user.
- b. That there is sufficient consent from the user to support the requested disclosure.
- c. Any specific factual finding required by any applicable law other than this chapter.

6. A custodian and the custodian's officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

**Sec. 20. NEW SECTION. 638.17 Uniformity of application and construction.**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to this chapter's subject matter among states that enact the revised uniform fiduciary access to digital assets Act.

**Sec. 21. NEW SECTION. 638.18 Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15

U.S.C. §7001 et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. §7003(b).

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JACK WHITVER  
President of the Senate

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LINDA UPMEYER  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 333, Eighty-seventh General Assembly.

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W. CHARLES SMITHSON  
Secretary of the Senate

Approved \_\_\_\_\_, 2017

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TERRY E. BRANSTAD  
Governor