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COMMERCE AND REGULATION

HOUSE FILE
BY JACOBS

381

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to electronic access to public information,
2 | creating an IowAccess board, and authorizing fees.

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

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HF 381

1 Section 1. NEW SECTION. 18E.1 DEFINITIONS.

2 For purposes of this chapter, unless the context otherwise
3 requires:

4 1. "Board" means the IowAccess network board created in
5 section 18E.2.

6 2. "Government body" means as defined in section 22.1.

7 3. "IowAccess network" means the IowAccess network through
8 which the state electronically provides access to public
9 information.

10 4. "Lawful custodian" means as defined in section 22.1.

11 5. "Network manager" means the entity or person engaged to
12 manage and direct the IowAccess network.

13 6. "Public information" means information that is stored,
14 preserved, gathered, or generated in digitized form by a
15 lawful custodian and which is a public record under section
16 22.1, subsection 3.

17 7. "Subscriber" means a person who, for a fee, receives
18 premium service from the IowAccess network.

19 8. "User association" means an association which satisfies
20 all of the following:

21 a. The membership of the association is identifiable by
22 regular payment of association dues and regularly maintained
23 membership lists.

24 b. The association is registered with the secretary of
25 state as a domestic corporation.

26 c. The primary purpose of the association is for advancing
27 the common occupation or profession of its membership.

28 d. The association promotes and encourages its members to
29 become subscribers of the IowAccess network.

30 Sec. 2. NEW SECTION. 18E.2 IOWACCESS BOARD -- MEMBERS --
31 DUTIES.

32 1. BOARD CREATED. An IowAccess network board is created
33 within the division of information technology services of the
34 department. The board, to the extent possible, shall do all
35 of the following:

- 1 a. Serve as a self-supporting and cost-effective gateway
2 to provide and enhance access to public information for
3 individuals, businesses, and other entities.
- 4 b. Provide rational, standardized, and comprehensive
5 services by enabling universal continuous access to accurate,
6 current public information that may be searched in a manner
7 that satisfies a user's purpose. Such services, at a minimum,
8 shall include standardized access to customized databases,
9 databases maintained by lawful custodians, and links to other
10 information sources.
- 11 c. Conduct electronic transactions.
- 12 d. Disseminate electronically through the IowAccess
13 network public information in the custody of each government
14 agency which is a lawful custodian.
- 15 e. Improve access to, and the utility of, public
16 information available through the IowAccess network by doing
17 all of the following:
- 18 (1) Expand the amount and type of public information
19 available through the IowAccess network for which no charge
20 will be made to the person seeking such information.
- 21 (2) Encourage increased access to public information
22 through the IowAccess network.
- 23 (3) Improve individual and business access to public
24 information through the use of available advanced technology.
- 25 f. Provide opportunities for individuals, businesses, and
26 other entities to review public information for accuracy and
27 to communicate any necessary corrections to the lawful
28 custodian.
- 29 g. Provide a secure mechanism for the authorized transfer
30 of nonpublic information.
- 31 h. Promote opportunities for private-public partnerships
32 and interagency cooperation in the exchange and sharing of
33 information.
- 34 i. Promote opportunities for innovative uses of public
35 information.

1 2. MEMBERSHIP.

2 a. The board shall be composed of thirteen members
3 including the following:

4 (1) The chief justice of the supreme court or the chief
5 justice's designee to represent the judicial branch.

6 (2) The director of the department of management or the
7 director's designee.

8 (3) The auditor of state or the auditor's designee.

9 (4) Six individuals appointed by the governor and subject
10 to confirmation by the senate who shall include all of the
11 following:

12 (a) One person representing financial institutions who
13 shall be actively engaged in finance and banking.

14 (b) One person representing insurers who shall be actively
15 engaged in the insurance industry.

16 (c) One person representing attorneys who shall be
17 actively engaged in the profession of law.

18 (d) One person representing media interests.

19 (e) One person representing cities who shall be actively
20 engaged in the administration of a city.

21 (f) One person representing counties who shall be actively
22 engaged in the administration of a county.

23 (5) Four members of the general assembly, two from the
24 senate and two from the house of representatives, with not
25 more than one member from each house being from the same
26 political party. The two senators shall be designated by the
27 president of the senate after consultation with the majority
28 and minority leaders of the senate. The two representatives
29 shall be designated by the speaker of the house of
30 representatives after consultation with the majority and
31 minority leaders of the house of representatives.

32 b. Members appointed by the governor shall serve three-
33 year staggered terms as designated by the governor and
34 appointments to the board are subject to the requirements of
35 sections 69.16, 69.16A, and 69.19. Members appointed by the

1 governor shall be reimbursed for actual and necessary expenses
2 incurred in performance of their duties. Such members may
3 also be eligible to receive compensation as provided in
4 section 7E.6.

5 3. DUTIES. The board shall do all of the following:

6 a. Negotiate a contract with a network manager who shall
7 perform the duties established in section 18E.3. A contract
8 entered into pursuant to this paragraph shall be for a period
9 not to exceed five years. The board shall review the
10 performance of the person under contract as network manager no
11 less than once every five years.

12 b. Establish IowAccess network policies and performance
13 criteria.

14 c. Review and approve the strategic plan, and any
15 revisions, submitted to the board by the network manager.

16 d. Review and approve an annual budget, including
17 estimated revenue and expenditures for the fiscal year, as
18 submitted by the network manager.

19 e. Review and approve fee schedules submitted by the
20 network manager, as well as the level of services associated
21 with such fees.

22 f. Adopt rules pursuant to chapter 17A necessary to carry
23 out the purposes of this chapter.

24 Sec. 3. NEW SECTION. 18E.3 IOWACCESS NETWORK MANAGER --
25 DUTIES.

26 1. The network manager retained by the board shall do all
27 of the following:

28 a. Serve as an agent of the board in carrying out the
29 purposes of the IowAccess network.

30 b. Direct and supervise the day-to-day operation of the
31 IowAccess network.

32 c. Report to the board on a periodic basis concerning new
33 potential services and new public information to be made
34 accessible through the IowAccess network.

35 d. Ensure that confidential information is not disclosed

1 by the network manager without the express authorization of
2 the lawful custodian.

3 e. Maintain a record of all operations of the IowAccess
4 network.

5 f. Maintain, on behalf of the board, all financial and
6 operational records, documents, and papers associated with the
7 IowAccess network. Such records, documents, and papers are
8 the property of the board and are public records subject to
9 chapter 22.

10 g. Develop and update, in consultation with lawful
11 custodians, a strategic plan for access to public information
12 through the IowAccess network to be submitted for approval to
13 the board.

14 h. Enter into contracts, subject to the approval of the
15 board, for consulting, research, and other services necessary
16 to carry out the duties of the manager.

17 i. Other duties as directed by the board.

18 2. The manager shall be allowed to access confidential
19 information necessary for the manager to carry out the duties
20 established in this section. The manager is subject to the
21 same restrictions and penalties as other lawful custodians
22 regarding the use and disclosure of confidential information.

23 3. a. Information compiled or developed by the network
24 manager for the IowAccess network and public information made
25 available through the IowAccess network shall be considered to
26 be in the public domain and is not subject to copyright
27 protection or licensing restrictions by the network manager,
28 the board, or the lawful custodian providing such information.

29 b. Notwithstanding paragraph "a", the fact that
30 information compiled or developed by the network manager or
31 public information is in the custody of the network manager
32 does not by itself result in such information being a public
33 record.

34 c. Notwithstanding paragraph "a", records that contain
35 information relating to the identity of a subscriber or user

1 of the IowAccess network regarding such subscriber's use of
2 the IowAccess network services are confidential. Such records
3 shall only be released with the express written consent of the
4 subscriber or user, or pursuant to court order.

5 Sec. 4. Section 18.183, subsections 1 and 2, Code 1999,
6 are amended to read as follows:

7 1. The government agency that is the lawful custodian of a
8 public record shall be responsible for determining whether a
9 record is required by state statute to be confidential. The
10 transmission of a record by a government agency by use of
11 ~~electronic-means-established, maintained, or managed by the~~
12 ~~division-of-information-technology-services~~ the IowAccess
13 network shall not constitute a transfer of the legal custody
14 of the record from the individual government agency to the
15 ~~division-of-information-technology-services-or-to-any-other~~
16 ~~person-or-entity~~ board or the network manager.

17 2. ~~The division-of-information-technology-services shall~~
18 ~~not-have-authority~~ board is not authorized to determine
19 whether an individual government agency should automate
20 records of which the individual government agency is the
21 lawful custodian. However, the division board may encourage
22 governmental agencies to implement electronic access to
23 government records as provided in section 18.182.

24 Sec. 5. Section 18.184, subsections 1 and 3, Code 1999,
25 are amended to read as follows:

26 1. ~~The division-of-information-technology-services~~ network
27 manager shall collect moneys paid to participating
28 governmental entities from persons who complete an electronic
29 financial transaction with the governmental entity by
30 accessing the IowAccess network. The moneys may include all
31 of the following:

32 a. Fees required to obtain an electronic public record as
33 provided in section 22.3A.

34 b. Fees required to process an application or file a
35 document, including but not limited to fees required to obtain

1 a license issued by a licensing authority.

2 c. Moneys owed to a governmental entity by a person
3 accessing the IowAccess network in order to satisfy a
4 liability arising from the operation of law, including the
5 payment of assessments, taxes, fines, and civil penalties.

6 d. Fees set by the board for access to the IowAccess
7 network as authorized in this division.

8 3. ~~The division-of-information-technology-services~~ network
9 manager shall serve as the agent of the governmental entity in
10 collecting moneys for receipt by governmental entities. The
11 moneys shall be transferred to governmental entities directly
12 or to the treasurer of state for disbursement to governmental
13 entities as required by the treasurer of state in cooperation
14 with the auditor of state.

15 Sec. 6. Section 18.185, Code 1999, is amended to read as
16 follows:

17 18.185 AUDITS REQUIRED.

18 A technology audit of the ~~electronic-transmission-system~~
19 IowAccess network by which government records are transmitted
20 electronically to the public shall be conducted not less than
21 once annually for the purpose of determining that government
22 records and other electronic data are not misappropriated or
23 misused by the ~~division-of-information-technology-services-or~~
24 ~~a-contractor-of-the-division~~ IowAccess network or the network
25 manager. A financial audit shall be conducted not less than
26 once annually to determine the financial condition of the
27 ~~division-of-information-technology-services~~ IowAccess network
28 and to make other relevant inquiries.

29 Sec. 7. Section 22.3A, subsection 2, paragraph a, Code
30 1999, is amended to read as follows:

31 ~~a. If-access-to-the-data-processing-software-is-provided~~
32 ~~to-a-person-solely-for-the-purpose-of-accessing-a-public~~
33 ~~record,~~ The amount charged shall be not more than that
34 required to recover direct publication costs, including but
35 not limited to editing, compilation, and media production

1 costs, incurred by the government body in developing the data
2 processing software, and preparing the data processing
3 software for transfer to the person. The amount shall be in
4 addition to any other fee required to be paid under this
5 chapter for the examination and copying of a public record.
6 If a person ~~requests-the-reproduction-of~~ accesses a public
7 record stored in an electronic format that does not require
8 formatting, editing, or compiling to ~~reproduce~~ access the
9 public record, the charge for providing the ~~reproduced~~
10 accessed public record shall not exceed the reasonable cost of
11 ~~reproducing-and-transmitting~~ accessing that public record.
12 The government body shall, if requested, provide documentation
13 which explains and justifies the amount charged. This
14 paragraph shall not apply to any publication for which a price
15 has been established pursuant to another section, including
16 section 7A.22.

17 Sec. 8. Section 321A.3, subsection 7, Code 1999, is
18 amended to read as follows:

19 7. Notwithstanding chapter 22 or any other law of this
20 state, except as provided in subsection 5, the department
21 shall not make available ~~an~~ a certified operating record in a
22 manner which would result in a fee of less than that provided
23 under subsection 1. Should the department make available
24 certified copies of abstracts of operating records on magnetic
25 tape or on disk or through electronic data transfer, the five
26 dollar fee under subsection 1 applies to each abstract
27 supplied, and an additional access fee may be charged for each
28 abstract supplied through electronic data transfer.

29 Sec. 9. DIRECTIONS TO CODE EDITOR. The Code editor is
30 directed to recodify sections 18.183 through 18.186, Code
31 1999, as new Code sections 18E.4 through 18E.7, and to make
32 any necessary internal reference corrections.

33 EXPLANATION

34 This bill creates new Code chapter 18E and provides a
35 statutory framework for the IowAccess network. An IowAccess

1 board is created within the division of information technology
2 services of the department of general services. The board, to
3 the extent possible, is directed to serve as a self-supporting
4 and cost-effective gateway to provide and enhance access to
5 public information for individuals, businesses, and other
6 entities; provide rational, standardized, and comprehensive
7 services by enabling universal continuous access to accurate,
8 current public information that may be searched in a manner
9 that satisfies a user's purpose; conduct electronic
10 transactions; disseminate electronically through the IowAccess
11 network, public information in the custody of each government
12 agency which is a lawful custodian; improve access to, and the
13 utility of, public information available through the IowAccess
14 network; provide opportunities for individuals, businesses,
15 and other entities to review public information for accuracy
16 and to communicate any necessary corrections to the lawful
17 custodian; provide a secure mechanism for the authorized
18 transfer of nonpublic information; promote opportunities for
19 private-public partnerships and interagency cooperation in the
20 exchange and sharing of information; and promote opportunities
21 for innovative uses of public information. The board is also
22 directed to negotiate a contract with a network manager who
23 shall perform the duties established in Code section 18E.3;
24 establish IowAccess network policies and performance criteria;
25 review and approve the strategic plan, and any revisions,
26 submitted to the board by the network manager; review and
27 approve an annual budget, including estimated revenue and
28 expenditures for the fiscal year, as submitted by the network
29 manager; review and approve fee schedules submitted by the
30 network manager, as well as the level of services associated
31 with such fees; and adopt rules pursuant to Code chapter 17A
32 necessary to carry out the purposes of this chapter.

33 The IowAccess board is composed of 13 persons from the
34 judicial, legislative, and executive branches of state
35 government, as well as public members who are appointed by the

1 governor. Members appointed by the governor are subject to
2 senate confirmation.

3 The bill provides that the IowAccess board is to negotiate
4 a contract with a network manager. The bill directs the
5 network manager to serve as an agent of the board in carrying
6 out the purposes of the IowAccess network; direct and
7 supervise the day-to-day operation of the IowAccess network;
8 report to the board on a periodic basis concerning new
9 potential services and new public information to be made
10 accessible through the IowAccess network; ensure that
11 confidential information is not disclosed by the network
12 manager without the express authorization of the lawful
13 custodian; maintain a record of all operations of the
14 IowAccess network; maintain, on behalf of the board, all
15 financial and operational records, documents, and papers
16 associated with the IowAccess network; develop and update, in
17 consultation with lawful custodians, a strategic plan for
18 access to public information through the IowAccess network to
19 be submitted for approval to the board; enter into contracts,
20 subject to the approval of the board, for consulting,
21 research, and other services necessary to carry out the duties
22 of the manager; and other duties as directed by the board.

23 The bill provides that information compiled or developed by
24 the network manager for the IowAccess network and public
25 information made available through the IowAccess network shall
26 be considered to be in the public domain and is not subject to
27 copyright protection or licensing restrictions by the network
28 manager, the board, or the lawful custodian providing such
29 information.

30 Code section 22.3A is amended to provide that the amount
31 which a government body may charge to a person for data
32 processing software shall not be more than that required to
33 recover direct publication costs incurred by the government
34 body in developing the data processing software, and preparing
35 the data processing software for transfer to the person.

1 Currently, that limit applies only if the access to the data
 2 processing software is provided to a person solely for the
 3 purpose of accessing a public record. The bill also changes
 4 references in that section involving reproduction of a public
 5 record to accessing such public record.

6 Code section 321A.3 is amended to provide that the minimum
 7 five dollar fee for the abstract of an operating record of a
 8 person applies only to certified abstracts. Currently, that
 9 minimum fee would apply to all abstracts provided by the
 10 department. The Code section is also amended to provide that
 11 an additional access fee may be charged for each abstract
 12 supplied through electronic data transfer.

13 The bill also makes corresponding changes to existing Code
 14 sections 18.183 through 18.185 and directs the Code editor to
 15 recodify sections 18.183 through 18.186, Code 1999, as new
 16 Code sections 18E.4 through 18E.7, and to make any necessary
 17 internal reference corrections.

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