SENATE . . . . . No. 2205

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act allowing access to a decedent's electronic mail accounts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Paragraph (a) of section 3-715 of chapter 190B of the General Laws, as amended by section 9 of chapter 521 of the Acts of 2008, is hereby further amended by adding at the end thereof the following sub-section:-

(28) gain reasonable access to the contents of an electronic mail account, as defined in section 5A of chapter 195, of the decedent upon receipt by the electronic mail service provider of: (i) a notarized written request for such access made by the personal representative, accompanied by a copy of the death certificate and/or a certified copy of the certificate of appointment as personal representative; or (ii) an order of the probate court that has jurisdiction over the estate of the decedent. The electronic mail service provider, as defined in section 5A of chapter 195, shall provide access to the requested records within 60 days of receipt of the request. Failure of the provider to comply within 60 days is a violation of this sub-section, entitling the requestor to apply for an appropriate order of the court directing compliance. This sub-section shall supersede provisions in the electronic mail service provider's contractual limitations, terms and conditions, or privacy policy, but it shall not supersede language in the decedent's will to the contrary. Nothing herein shall prevent a provider from proving by clear and convincing evidence that it provided opt-out language whereby the decedent affirmatively declined, or stated explicitly that the decedent declined, to have the decedent's electronic mail records released after death.

SECTION 2. Section 3-715 of chapter 190B of the General Laws, as amended by section 9 of chapter 521 of the Acts of 2008, is hereby further amended by striking paragraph (b) and inserting in place thereof the following paragraph:-

(b) Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 3-902, a special personal representative acting reasonably for the benefit of the interested persons, may properly exercise only those

25 powers set forth in subsections (1), (2), (3), (5), (7), (12), (15), (18), (19), (20), (21), (22), (24),
26 (26), and (28) of paragraph (a).

27 SECTION 3. Section 5A of chapter 195 of the General Laws, as appearing in the 2008
28 Official Edition, is hereby amended by adding at the end thereof the following paragraph:-

29 (5) power to access the contents of an electronic mail account of the decedent upon
30 receipt by the electronic mail service provider of: (i) a notarized written request for such access
31 made by the executor or administrator, accompanied by a copy of the death certificate and/or a
32 certified copy of the certificate of appointment as executor or administrator; or (ii) an order of
33 the probate court that has jurisdiction over the estate of the decedent.

34 The electronic mail service provider shall provide access to the requested records within
35 60 days of receipt of the request. Failure of the provider to comply within 60 days is a violation
36 of this paragraph, entitling the requestor to apply for an appropriate order of the court directing
37 compliance. This paragraph shall supersede provisions in the electronic mail service provider's
38 contractual limitations, terms and conditions, or privacy policy, but it shall not supersede
39 language in the decedent's will to the contrary. Nothing herein shall prevent a provider from
40 proving by clear and convincing evidence that it provided opt-out language whereby the
41 decedent affirmatively declined, or stated explicitly that the decedent declined, to have the
42 decedent's electronic mail records released after death.

43 For purposes of this subsection, the following words shall, unless the context otherwise
44 requires, have the following meanings:

45 "Electronic mail service provider", any person who is an intermediary in sending or
46 receiving electronic mail, and who provides to end-users of electronic mail services the ability to
47 send or receive electronic mail.

48 "Electronic mail account", all electronic mail sent, received, or created by an end-user of
49 electronic mail services provided by an electronic mail service provider that is stored or recorded
50 by the provider in the regular course of such services and any other electronic information stored
51 or recorded by such provider that is directly related to the electronic mail services provided to the
52 end-user by such provider, including, but not limited to, billing and payment information.

53 SECTION 4. This act shall apply to: (i) all electronic mail accounts existing on or after
54 the effective date, and (ii) all instances in which the electronic mail account contents have been
55 preserved by the electronic mail service provider as of the effective date.