SENATE . . . . . No. 2313

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to 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. Subsection (a) of section 3-715 of chapter 190B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by adding the following paragraph:-

(28) gain reasonable access to the contents of an electronic mail account 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 or a certified copy of the letter 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 shall provide access to the requested records within 60 days of receipt of the request. Failure of the provider to comply within said 60 days shall be a violation of this paragraph, entitling the requestor to apply for an appropriate order of the court directing compliance. This paragraph shall supersede provisions in the electronic mail service provider's contractual limitations, terms and conditions or privacy policy; provided, however, that access to the contents of an electronic mail account shall not be provided if the provider shows, by clear and convincing evidence, that the decedent affirmatively declined to have the decedent's electronic mail account released after death. This paragraph shall not supersede language in the decedent's will to the contrary. For purposes of this paragraph, the following words shall, unless the context otherwise requires, have the following meanings:

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

23 “Electronic mail service provider”, any person who is an intermediary in sending or
24 receiving electronic mail and who provides to end-users of electronic mail services the ability to
25 send or receive electronic mail.

26 SECTION 2. Said section 3-715 of said chapter 190B, asso appearing, is hereby further
27 amended by striking out subsection (b) and inserting in place thereof the following subsection:-

28 (b) Except as restricted or otherwise provided by the will or by an order in a formal
29 proceeding and subject to the priorities stated in section 3-902, a special personal representative
30 acting reasonably for the benefit of the interested persons, may properly exercise only those
31 powers set forth in subsections (1), (2), (3), (5), (7), (12), (15), (18), (19), (20), (21), (22), (24),
32 (26) and (28) of paragraph (a).

33 SECTION 3. Paragraph (28) of subsection (a) and subsection (b) of section 3-715 of
34 chapter 190B of the General Laws shall apply to: (i) all electronic mail accounts existing on or
35 after the effective date of this act; and (ii) all instances in which the electronic mail account
36 contents have been preserved by the electronic mail service provider as of the effective date of
37 this act.