

# **HOUSE . . . . . No. 4243**

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## **The Commonwealth of Massachusetts**

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HOUSE OF REPRESENTATIVES, July 7, 2014.

The committee on the Judiciary to whom were referred the petition (accompanied by bill, Senate, No. 702) of Cynthia S. Creem, Kay Khan, Thomas P. Conroy, Michael O. Moore and other members of the General Court for legislation relative to access to a decedent's electronic mail accounts and the petition (accompanied by bill, House, No. 1314) of John V. Fernandes and others for legislation to provide certain access to electronic mail accounts of decedents in probating estates, reports recommending that the accompanying bill (House, No. 4243) ought to pass.

For the committee,

CHRISTOPHER M. MARKEY.

**HOUSE . . . . . No. 4243**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Fourteen**  
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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:*

1           SECTION 1. Subsection (a) of section 3-715 of chapter 190B of the General Laws, as  
2 appearing in the 2010 Official Edition, is hereby amended by adding the following paragraph:-

3           (28) gain reasonable access to the contents of an electronic mail account of the decedent  
4 upon receipt by the electronic mail service provider of: (i) a notarized written request for such  
5 access made by the personal representative, accompanied by a copy of the death certificate and a  
6 certified copy of the letter of appointment as personal representative; or (ii) an order of the  
7 probate court that has jurisdiction over the estate of the decedent. The electronic mail service  
8 provider shall provide access to the requested records within 60 days of receipt of the request.  
9 Failure of the provider to comply within said 60 days shall be a violation of this paragraph,  
10 entitling the requestor to apply for an appropriate order of the court directing compliance. This  
11 paragraph shall supersede provisions in the electronic mail service provider's contractual  
12 limitations, terms and conditions or privacy policy; provided, however, that access to the  
13 contents of an electronic mail account shall not be provided if the provider shows, by clear and  
14 convincing evidence, that it offered opt-out language, separate and distinct from the standard  
15 agreement or terms of service, whereby the decedent affirmatively declined to have the  
16 decedent's electronic mail account released after death. This paragraph shall not supersede  
17 language in the decedent's will to the contrary. The provisions of this act shall be subject to  
18 copyright law and all other applicable federal law. Electronic mail service providers and their  
19 officers, employees and agents are immune from liability for any action done in good faith in  
20 compliance with this act. For purposes of this paragraph, the following words shall, unless the  
21 context otherwise requires, have the following meanings:

22           "Electronic mail account", all electronic mail sent, received or created by an end-user of  
23 electronic mail services provided by an electronic mail service provider that is stored or recorded

24 by the provider in the regular course of such services and any other electronic information stored  
25 or recorded by such provider that is directly related to the electronic mail services provided to the  
26 end-user by such provider, including, but not limited to, billing and payment information;  
27 provided, however, that this definition shall not apply to accounts created, administered, or

28 hosted by an employer for an employee and intended to be used for professional  
29 purposes.

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

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

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

40 SECTION 3. Paragraph (28) of subsection (a) and subsection (b) of section 3-715 of  
41 chapter

42 190B of the General Laws shall apply to: (i) all electronic mail accounts existing on or  
43 after the effective date of this act; and (ii) all instances in which the electronic mail account  
44 contents have been preserved by the electronic mail service provider as of the effective date of  
45 this act.

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