

HOUSE No. 1748

The Commonwealth of Massachusetts

PRESENTED BY:

Jeffrey N. Roy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>	<i>1/12/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/14/2023</i>
<i>John Barrett, III</i>	<i>1st Berkshire</i>	<i>2/14/2023</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>2/15/2023</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/22/2023</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>3/21/2023</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>3/31/2023</i>

HOUSE No. 1748

By Representative Roy of Franklin, a petition (accompanied by bill, House, No. 1748) of Jeffrey N. Roy and others relative to access to a decedent's electronic mail accounts. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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. The General Laws are hereby amended by inserting after chapter 201F the
2 following chapter:-

3 CHAPTER 201G. MASSACHUSETTS REVISED UNIFORM FIDUCIARY ACCESS
4 TO DIGITAL ASSETS ACT.

5 Section 1. Short title

6 This chapter may be cited as the Massachusetts Revised Uniform Fiduciary Access to
7 Digital Assets Act.

8 Section 2. Definitions

9 In this chapter:

10 (1) “Account” means an arrangement under a terms-of-service agreement in which a
11 custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides
12 goods or services to the user.

13 (2) “Agent” means an attorney-in-fact granted authority under a durable or nondurable
14 power of attorney.

15 (3) “Carries” means engages in the transmission of an electronic communication.

16 (4) “Catalogue of electronic communications” means information that identifies each
17 person with which a user has had an electronic communication, the time and date of the
18 communication, and the electronic address of the person.

19 (5) “Conservator” means a person appointed by a court to manage the estate of a
20 protected person and includes a limited conservator, temporary conservator, special conservator,
21 and those individuals specifically authorized under section 5-408 of chapter 190B.

22 (6) “Content of an electronic communication” means information concerning the
23 substance or meaning of the communication which:

24 (A) has been sent or received by a user;

25 (B) is in electronic storage by a custodian providing an electronic communication service
26 to the public or is carried or maintained by a custodian providing a remote computing service to
27 the public; and

28 (C) is not readily accessible to the public.

29 (7) “Court” means the probate and family court department of the trial court and any
30 other Massachusetts court having appellate jurisdiction over any ruling by the probate and family
31 court.

32 (8) “Custodian” means a person that carries, maintains, processes, receives, or stores a
33 digital asset of a user.

34 (9) “Designated recipient” means a person chosen by a user using an online tool to
35 administer digital assets of the user.

36 (10) “Digital asset” means an electronic record in which an individual has a right or
37 interest. The term does not include an underlying asset or liability unless the asset or liability is
38 itself an electronic record.

39 (11) “Electronic” means relating to technology having electrical, digital, magnetic,
40 wireless, optical, electromagnetic, or similar capabilities.

41 (12) “Electronic communication” has the meaning set forth in 18 U.S.C. Section
42 2510(12), as amended.

43 (13) “Electronic communication service” means a custodian that provides to a user the
44 ability to send or receive an electronic communication.

45 (14) “Fiduciary” means an original, additional, or successor personal representative,
46 conservator, agent or trustee.

47 (15) “Information” means data, text, images, videos, sounds, codes, computer programs,
48 software, databases, or the like.

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

52 (17) “Person” means an individual, estate, business or nonprofit entity, public
53 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
54 entity.

55 (18) “Personal representative” means an executor, administrator, special administrator, or
56 person that performs substantially the same function under law of this commonwealth other than
57 this chapter.

58 (19) “Power of attorney” means a record that grants an agent authority to act in the place
59 of a principal.

60 (20) “Principal” means an individual who grants authority to an agent in a power of
61 attorney.

62 (21) “Protected person” means an individual for whom a conservator has been appointed.
63 The term includes an individual for whom a petition for the appointment of a conservator is
64 pending.

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

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

70 (24) “Terms of service agreement” means an agreement that controls the relationship
71 between a user and a custodian.

72 (25) “Trustee” means a fiduciary with legal title to property under an agreement or
73 declaration that creates a beneficial interest in another. The term includes an original, additional,
74 or successor trustee, whether or not appointed or confirmed by the court.

75 (26) “User” means a person that has an account with a custodian.

76 (27) “Will” includes a codicil, testamentary instrument that only appoints a personal
77 representative, and an instrument that revokes or revises a testamentary instrument.

78 Section 3. Applicability

79 (a) This chapter applies to:

80 (1) a fiduciary acting under a will or power of attorney executed before, on, or after the
81 effective date of this chapter;

82 (2) a personal representative acting for a decedent who died before, on, or after the
83 effective date of this chapter;

84 (3) a conservatorship proceeding commenced before, on, or after the effective date of this
85 chapter; and

86 (4) a trustee acting under a trust created before, on, or after the effective date of this
87 chapter.

88 (b) This chapter applies to a custodian if the user resides in this commonwealth or resided
89 in this commonwealth at the time of the user’s death.

90 (c) This chapter does not apply to a digital asset of an employer used by an employee in
91 the ordinary course of the employer's business.

92 Section 4. Direction for disclosure of digital assets.

93 (a) A user may use an online tool to direct the custodian to disclose or not to disclose
94 some or all of the user's digital assets, including the content of electronic communications. If the
95 online tool allows the user to modify or delete a direction at all times, a direction regarding
96 disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of
97 attorney or other record made prior to the date of the direction made by the user using an online
98 tool.

99 (b) The user may allow or prohibit in a will, trust, power of attorney, or other record,
100 disclosure to a fiduciary of some or all of the user's digital assets, including the content of
101 electronic communications sent or received by the user, and the provisions of such will or other
102 record shall override a contrary direction by the user using an online tool that was made prior to
103 the date of such will or other record.

104 (c) A user's direction under subsection (a) or (b) overrides (i) a contrary provision in a
105 terms-of-service agreement that does not require the user to act affirmatively and distinctly from
106 the user's assent to the terms of service and (ii) a contrary prior direction from the user under
107 subsection (a) or (b).

108 (d) If the online tool has not been utilized by the user or if the custodian has not provided
109 an online tool and, in either case, if no direction regarding some or all of the digital assets is
110 provided to the fiduciary in a will or other record, the fiduciary may petition a court for access to

111 some or all of the user’s digital assets. The court shall grant such access unless it finds that the
112 fiduciary is not acting in good faith or that such access is prohibited by applicable federal law.

113 Section 5. Terms-of-service agreement

114 (a) Except as otherwise provided in Section 4, this chapter does not change or impair a
115 right of a custodian or a user under a terms-of-service agreement to access and use digital assets
116 of the user.

117 (b) Except as otherwise provided in Section 4, this chapter does not give a fiduciary any
118 new or expanded rights other than those held by the user for whom, or for whose estate, the
119 fiduciary acts or represents.

120 (c) A fiduciary’s access to digital assets may be modified or eliminated by a user, by
121 federal law, or, subject to Section 4, by a terms-of-service agreement if the user has not provided
122 a direction under Section 4(a) or Section 4(b) or the fiduciary has not obtained a court order
123 issued under Section 4(d).

124 Section 6. Procedure for disclosing digital assets

125 (a) When disclosing digital assets of a user under this chapter, the custodian shall, in
126 accordance with the direction provided under Section 4(a) or Section 4(b) or a court order issued
127 under Section 4(d):

128 (1) if requested by the fiduciary or designated recipient, grant a fiduciary or designated
129 recipient full access to the user’s account;

130 (2) subject to Section 6(d), grant a fiduciary or designated recipient partial access to the
131 user's account to the extent that such partial access is requested by a fiduciary or designated
132 recipient; or

133 (3) at the option of the custodian, provide a fiduciary or designated recipient a copy in a
134 record of any digital asset that, on the date the custodian received the request for disclosure, the
135 user could have accessed if the user were alive and had full capacity and access to the account.

136 (b) A custodian may assess a reasonable administrative charge for the cost of disclosing
137 digital assets under this chapter.

138 (c) A custodian need not disclose under this chapter a digital asset deleted by a user.

139 (d) If a user directs or a fiduciary requests a custodian to disclose under this chapter
140 some, but not all, of the user's digital assets, the custodian need not disclose the assets if
141 segregation of the assets would impose an undue burden on the custodian. If the custodian
142 believes the direction or request imposes an undue burden, the custodian or fiduciary may seek
143 an order from the court to disclose:

144 (1) a subset limited by date of the user's digital assets;

145 (2) all of the user's digital assets to the fiduciary or designated recipient;

146 (3) none of the user's digital assets; or

147 (4) all of the user's digital assets to the court for review in camera.

148 Section 7. Disclosure of content of electronic communications of deceased user

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

153 (1) a written request for disclosure in physical or electronic form;

154 (2) a certified copy of the death certificate of the user;

155 (3) an attested copy of the letter of appointment of the personal representative or a small
156 estate affidavit or court order;

157 (4) unless the deceased user provided direction using an online tool, (i) a copy of the
158 user's will, trust or other record evidencing the user's consent to disclosure of the content of
159 electronic communications, (ii) a court order acknowledging that the user consented to the
160 disclosure of the content of electronic communications to the personal representative under the
161 user's will, trust or other record or (iii) a court order issued under Section 4(d); and

162 (5) if requested by the custodian:

163 (A) a number, username, address, or other unique subscriber or account identifier
164 assigned by the custodian to identify the user's account;

165 (B) evidence linking the account to the user; or

166 (C) a finding by the court that the deceased user had a specific account with the
167 custodian, identifiable by the information specified in subparagraph (A).

168 Section 8. Disclosure of other digital assets of deceased user

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

174 (1) a written request for disclosure in physical or electronic form;

175 (2) a certified copy of the death certificate of the user;

176 (3) an attested copy of the letter of appointment of the representative or a small estate
177 affidavit or court order; and

178 (4) if requested by the custodian:

179 (A) a number, username, address, or other unique subscriber or account identifier
180 assigned by the custodian to identify the user's account;

181 (B) evidence linking the account to the user;

182 (C) an affidavit stating that disclosure of the user's digital assets is reasonably necessary
183 for administration of the estate; or

184 (D) a finding by the court that:

185 (i) the user had a specific account with the custodian, identifiable by the
186 information specified in subparagraph (A); or

187 (ii) disclosure of the user's digital assets is reasonably necessary for
188 administration of the estate.

189 Section 9. Disclosure of content of electronic communications of principal

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

194 (1) a written request for disclosure in physical or electronic form;

195 (2) an original or copy of the power of attorney expressly granting the agent authority
196 over the content of electronic communications of the principal;

197 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
198 effect; and

199 (4) if requested by the custodian:

200 (A) a number, username, address, or other unique subscriber or account identifier
201 assigned by the custodian to identify the principal's account; or

202 (B) evidence linking the account to the principal.

203 Section 10. Disclosure of other digital assets of principal

204 Unless otherwise ordered by the court, directed by the principal, or provided by a power
205 of attorney, a custodian shall disclose to an agent with specific authority over digital assets or
206 general authority to act on behalf of a principal a catalogue of electronic communications sent or
207 received by the principal and digital assets, other than the content of electronic communications,
208 of the principal if the agent gives the custodian:

- 209 (1) a written request for the disclosure in physical or electronic form;
- 210 (2) an original or a copy of the power of attorney that gives the agent specific authority
211 over digital assets or general authority to act on behalf of the principal;
- 212 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
213 effect and;
- 214 (4) if requested by the custodian:
- 215 (A) a number, username, address, or other unique subscriber or account identifier
216 assigned by the custodian to identify the principal's account; or
- 217 (B) evidence linking the account to the principal.

218 Section 11. Disclosure of digital assets held in trust when trustee is original user

219 Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to
220 a trustee that is an original user of an account any digital asset of the account held in trust,
221 including a catalogue of electronic communications of the trustee and the content of electronic
222 communications.

223 Section 12. Disclosure of contents of electronic communications held in trust when
224 trustee is not original user

225 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a
226 custodian shall disclose to a trustee that is not an original user of an account the content of an
227 electronic communication sent or received by an original or successor user and carried,

228 maintained, processed, received, or stored by the custodian in the account of the trust if the
229 trustee gives the custodian:

230 (1) a written request for disclosure in physical or electronic form;

231 (2) a certified copy of the trust instrument or a certification of the trust under chapter
232 203E that includes consent to disclosure of the content of electronic communications to the
233 trustee;

234 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the
235 trustee is a currently acting trustee of the trust; and

236 (4) if requested by the custodian:

237 (A) a number, username, address, or other unique subscriber or account identifier
238 assigned by the custodian to identify the trust's account; or

239 (B) evidence linking the account to the trust.

240 Section 13. Disclosure of other digital assets held in trust when trustee is not original
241 user

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

248 (1) a written request for disclosure in physical or electronic form;

249 (2) a certified copy of the trust instrument or a certification of the trust under chapter

250 203E;

251 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the

252 trustee is a currently acting trustee of the trust; and

253 (4) if requested by the custodian:

254 (A) a number, username, address, or other unique subscriber or account identifier

255 assigned by the custodian to identify the trust's account; or

256 (B) evidence linking the account to the trust.

257 Section 14. Disclosure of digital assets to conservator of protected person

258 (a) After an opportunity for a hearing under chapter 190B, the court may grant a

259 conservator access to the digital assets of a protected person.

260 (b) Unless otherwise ordered by the court or directed by the user, a custodian shall

261 disclose to a conservator the catalogue of electronic communications sent or received by a

262 protected person and any digital assets, other than the content of electronic communications, in

263 which the protected person has a right or interest if the conservator gives the custodian:

264 (1) a written request for disclosure in physical or electronic form;

265 (2) an attested copy of the court order that gives the conservator authority over the

266 digital assets of the protected person; and

267 (3) if requested by the custodian:

268 (A) a number, username, address, or other unique subscriber or account
269 identifier assigned by the custodian to identify the account of the protected person; or

270 (B) evidence linking the account to the protected person.

271 (c) A conservator with general authority to manage the assets of a protected person may
272 request a custodian of the digital assets of the protected person to suspend or terminate an
273 account of the protected person for good cause. A request made under this section must be
274 accompanied by an attested copy of the court order giving the conservator authority over the
275 protected person's property.

276 Section 15. Fiduciary duty and authority

277 (a) The user's rights in digital assets, including the content of electronic communications,
278 constitute property of the estate of the user to be managed consistent with the legal duties
279 imposed on a fiduciary charged with managing tangible property, including:

280 (1) the duty of care;

281 (2) the duty of loyalty; and

282 (3) the duty of confidentiality.

283 (b) A fiduciary's authority with respect to a digital asset of a user:

284 (1) except as otherwise provided in Section 4, is subject to the applicable terms of
285 service;

286 (2) is subject to other applicable law, including copyright law;

287 (3) is limited by the scope of the fiduciary's duties; and

288 (4) may not be used to impersonate the user.

289 (c) A fiduciary with authority over the property of a decedent, protected person, principal
290 or settlor has the right to access any digital asset in which the decedent, protected person,
291 principal, or settlor had a right or interest and that is not held by a custodian or subject to a
292 terms-of-service agreement.

293 (d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of
294 the property of the decedent, protected person, principal, or settlor for the purpose of applicable
295 computer fraud and unauthorized computer access laws, including section 120F of chapter 266 of
296 the General Laws.

297 (e) A fiduciary with authority over the tangible, personal property of a decedent,
298 protected person, principal, or settlor:

299 (1) has the right to access the property and any digital asset stored in it; and

300 (2) is an authorized user for the purpose of computer fraud and unauthorized
301 computer access laws, including section 120F of chapter 266 of the General Laws.

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

304 (g) A fiduciary of a user may request a custodian to terminate the user's account. A
305 request for termination must be in writing, in either physical or electronic form, and
306 accompanied by:

307 (1) if the user is deceased, a certified copy of the death certificate of the user;

308 (2) an attested copy of the letter of appointment of the representative or a small
309 estate affidavit or court order, power of attorney, or trust giving the fiduciary authority over the
310 account; and

311 (3) if requested by the custodian:

312 (A) a number, username, address, or other unique subscriber or account identifier
313 assigned by the custodian to identify the user's account;

314 (B) evidence linking the account to the user; or

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

317 Section 16. Custodian compliance and immunity

318 (a) Not later than 60 days after receipt of the information required under sections 7
319 through 14, a custodian shall comply with a request under this chapter from a fiduciary or
320 designated recipient to disclose digital assets or terminate an account. If the custodian fails to
321 comply, the fiduciary or designated recipient may apply to the court for an order directing
322 compliance.

323 (b) A custodian may notify the user that a request for disclosure or to terminate an
324 account was made under this chapter.

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

328 (d) This chapter does not limit a custodian's ability to obtain or require a fiduciary or
329 designated recipient requesting disclosure or termination under this chapter to obtain a court
330 order which:

331 (1) specifies that an account belongs to the protected person or principal;

332 (2) specifies that there is sufficient consent from the protected person or principal to
333 support the requested disclosure; and

334 (3) contains a finding required by law other than this chapter.

335 (e) A custodian and its officers, employees, and agents are immune from liability for an
336 act or omission done in good faith in compliance with this chapter.

337 Section 17. Uniformity of application and construction

338 In applying and construing this uniform act, consideration must be given to the need to
339 promote uniformity of the law with respect to its subject matter among states that enact it.

340 Section 18. Relation to Electronic Signatures in Global and National Commerce Act

341 This chapter modifies, limits and supersedes the federal Electronic Signatures in Global
342 and National Commerce Act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or

343 supersede section 101(c) of said act, 15 U.S.C. section 7001(c), or authorize electronic delivery
344 of any of the notices described in section 103(b) of said act, 15 U.S.C. section 7003(b).

345 Section 19. Severability

346 If any provision of this chapter or its application to any person or circumstance is held
347 invalid, the invalidity does not affect other provisions or applications of this chapter which can
348 be given effect without the invalid provision or application, and to this end the provisions of this
349 chapter are severable.

350 SECTION 2. This act shall take effect 1 year after its passage.

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