S T A T E O F N E W Y O R K

8851--A

I N A S S E M B L Y

February 25, 2014

Introduced by M. of A. HEVESI -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the estates, powers and trusts law and the general business law, in relation to the power of the fiduciary to access electronic mail and electronic information storage accounts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subparagraph 22 of paragraph (b) of section 11-1.1 of the estates, powers and trusts law, as renumbered by chapter 904 of the laws of 1973, is renumbered subparagraph 23 and a new subparagraph 22 is added to read as follows:

(22) TO REQUEST A RECORD OR OTHER INFORMATION PERTAINING TO THE DECEDENT'S ELECTRONIC MAIL ACCOUNT OR ELECTRONIC DATA STORAGE ACCOUNT, AS SUCH TERMS ARE DEFINED IN SECTION 11-1.12 OF THIS PART, WHEN SUCH REQUEST IS NECESSARY OR APPROPRIATE FOR THE ADMINISTRATION OF THE ESTATE. SUCH A REQUEST SHALL NOT INCLUDE THE CONTENTS OF ANY ELECTRONIC MAIL OR ELECTRONIC DATA OR ANY OTHER INFORMATION FOR WHICH DISCLOSURE IS NOT AUTHORIZED PURSUANT TO FEDERAL LAW.

S 2. The estates, powers and trusts law is amended by adding a new section 11-1.12 to read as follows:

S 11-1.12 LIMITED POWER OF EXECUTOR OR PERSONAL REPRESENTATIVE TO ACCESS THE CONTENTS OF ELECTRONIC MAIL AND ELECTRONIC DATA

(A) AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "ELECTRONIC" SHALL MEAN OF OR RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

2. "ELECTRONIC DATA" MEANS ANY DATA, IMAGES, PICTURES, SOUNDS, VIDEO, OR WRITING PRODUCED OR STORED BY ELECTRONIC MEANS AND CAPABLE OF BEING ACCURATELY REPRODUCED IN FORMS PERCEPTIBLE BY HUMAN SENSORY CAPABILITIES.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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3. "ELECTRONIC DATA STORAGE" SHALL MEAN THE STORAGE OF ELECTRONIC DATA THAT IS TRANSMITTED BY A PERSON ON OR THROUGH THE INTERNET FOR STORAGE ON A COMPUTER, COMPUTER NETWORK, OPTICAL DISC OR OTHER MEDIA.

4. "ELECTRONIC DATA STORAGE SERVICE PROVIDER" SHALL MEAN A PERSON OR ENTITY THAT PROVIDES USERS WITH ACCOUNTS TO WHICH ELECTRONIC DATA MAY BE TRANSMITTED ON OR THROUGH THE INTERNET FOR STORAGE.

5. "ELECTRONIC MAIL" MEANS ELECTRONIC DATA THAT IS TRANSMITTED FROM ONE PERSON TO ANOTHER ON OR THROUGH THE INTERNET FOR THE PURPOSE OF COMMUNICATION.

6. "ELECTRONIC MAIL SERVICE PROVIDER" MEANS A PERSON OR ENTITY THAT PROVIDES USERS WITH ACCOUNTS FROM WHICH ELECTRONIC MAIL MAY BE SENT AND STORED, AND TO WHICH ELECTRONIC MAIL MAY BE RECEIVED AND STORED.

(B) WHEN A DECEDENT HAS NOMINATED THE EXECUTOR OR PERSONAL REPRESENTATIVE OF HIS OR HER ESTATE AS THE PERSON AUTHORIZED TO ACCESS ELECTRONIC MAIL OR ELECTRONIC DATA THAT IS STORED IN HIS OR HER ACCOUNT BY A SERVICE PROVIDER, AS DESCRIBED IN SECTION ONE HUNDRED SIXTY-SEVEN-A OF THE GENERAL BUSINESS LAW, THE EXECUTOR OR PERSONAL REPRESENTATIVE SHALL HAVE THE POWER TO ACCESS SUCH ELECTRONIC MAIL OR ELECTRONIC DATA, PROVIDED THAT THE EXECUTOR OR PERSONAL REPRESENTATIVE SHALL NOT HAVE ACCESS TO ANY ELECTRONIC MAIL OR ELECTRONIC DATA FOR WHICH THE DECEDENT DID NOT GRANT AUTHORIZATION TO ACCESS. ANY ORDER OF THE COURT REGARDING SUCH ACCESS SHALL NOT EXCEED THE SCOPE OF THE DECEDENT'S AUTHORIZATION AND SHALL ALSO ORDER THAT THE ESTATE SHALL FIRST INDEMNIFY THE SERVICE PROVIDER FROM ALL LIABILITY IN COMPLYING WITH SUCH ORDER.

(C) WHEN A DECEDENT HAS NOT AUTHORIZED THE EXECUTOR OR PERSONAL REPRESENTATIVE'S ACCESS TO ANY ELECTRONIC MAIL OR ELECTRONIC DATA STORED IN THE DECEDENT'S SERVICE ACCOUNT BECAUSE THE SERVICE PROVIDER DID NOT PROVIDE THE DECEDENT WITH THE ABILITY TO AUTHORIZE SUCH ACCESS, UNLESS EXPRESSLY PROHIBITED IN THE WILL OR OTHER INSTRUMENT, THE EXECUTOR OR PERSONAL REPRESENTATIVE MAY PETITION THE COURT FOR AN ORDER GRANTING ACCESS TO SUCH SERVICE ACCOUNTS FOR THE PURPOSE OF PROPER ADMINISTRATION OF THE ESTATE. ANY ORDER OF THE COURT GRANTING SUCH ACCESS SHALL ALSO ORDER THAT THE ESTATE SHALL FIRST INDEMNIFY THE SERVICE PROVIDER FROM ALL LIABILITY IN COMPLYING WITH SUCH ORDER.

S 3. The general business law is amended by adding a new article 10-C to read as follows:

ARTICLE 10-C
ELECTRONIC MAIL AND ELECTRONIC DATA STORAGE SERVICES

SECTION 167. DEFINITIONS.
167-A. ELECTRONIC MAIL ACCOUNTS AND ELECTRONIC DATA ACCOUNTS; CONSENT TO ACCESS AFTER DEATH.
167-B. ELECTRONIC MAIL ACCOUNTS AND ELECTRONIC DATA STORAGE ACCOUNTS; ACCESS AFTER THE DEATH.
167-C. ELECTRONIC MAIL ACCOUNTS AND ELECTRONIC DATA STORAGE ACCOUNTS; ACCOUNT TERMINATION UPON THE DEATH.
167-D. CONSUMER EDUCATION.

S 167. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "ELECTRONIC" SHALL MEAN OF OR RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

2. "ELECTRONIC DATA" MEANS ANY DATA, IMAGES, PICTURES, SOUNDS, VIDEO, OR WRITING PRODUCED OR STORED BY ELECTRONIC MEANS AND CAPABLE OF BEING

ACCURATELY REPRODUCED IN FORMS PERCEPTIBLE BY HUMAN SENSORY CAPABILITIES.

3. "ELECTRONIC DATA STORAGE" SHALL MEAN THE STORAGE OF ELECTRONIC DATA THAT IS TRANSMITTED BY A PERSON ON OR THROUGH THE INTERNET FOR STORAGE ON A COMPUTER, COMPUTER NETWORK, OPTICAL DISC OR OTHER MEDIA.

4. "ELECTRONIC DATA STORAGE SERVICE PROVIDER" SHALL MEAN A PERSON OR ENTITY THAT PROVIDES USERS WITH ACCOUNTS TO WHICH ELECTRONIC DATA MAY BE TRANSMITTED ON OR THROUGH THE INTERNET FOR STORAGE.

5. "ELECTRONIC MAIL" MEANS ELECTRONIC DATA THAT IS TRANSMITTED FROM ONE PERSON TO ANOTHER ON OR THROUGH THE INTERNET FOR THE PURPOSE OF COMMUNICATION.

6. "ELECTRONIC MAIL SERVICE PROVIDER" MEANS A PERSON OR ENTITY THAT PROVIDES USERS WITH ACCOUNTS FROM WHICH ELECTRONIC MAIL MAY BE SENT AND STORED, AND TO WHICH ELECTRONIC MAIL MAY BE RECEIVED AND STORED.

7. "NEW YORK USER" MEANS A USER WHO ACKNOWLEDGES THAT HE OR SHE IS A NEW YORK RESIDENT OR PROVIDES AN IN-STATE BILLING ADDRESS OR ZIP CODE WHEN REGISTERING WITH THE ELECTRONIC DATA STORAGE SERVICE PROVIDER OR THE ELECTRONIC MAIL SERVICE PROVIDER.

8. "SERVICE ACCOUNT" SHALL MEAN AN ELECTRONIC MAIL SERVICE ACCOUNT AND AN ELECTRONIC DATA STORAGE SERVICE ACCOUNT UNLESS THE CONTEXT REQUIRES A DIFFERENT MEANING.

9. "SERVICE PROVIDER" SHALL MEAN AN ELECTRONIC MAIL SERVICE PROVIDER AND AN ELECTRONIC DATA STORAGE SERVICE PROVIDER UNLESS THE CONTEXT REQUIRES A DIFFERENT MEANING.

S 167-A. ELECTRONIC MAIL ACCOUNTS AND ELECTRONIC DATA ACCOUNTS; CONSENT TO ACCESS AFTER DEATH. 1. FOR ANY ELECTRONIC MAIL ACCOUNT OR ELECTRONIC DATA STORAGE ACCOUNT OPENED AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN, THE SERVICE PROVIDER SHALL PROVIDE A NEW YORK USER WITH THE OPTION TO NOMINATE AN INDIVIDUAL WHO SHALL BE AUTHORIZED TO ACCESS SUCH SERVICE ACCOUNT AFTER HIS OR HER DEATH. SUCH AUTHORIZATION SHALL BE DEEMED TO BE THE NEW YORK USER'S CONSENT TO THE NOMINEE'S ACCESS OF THE CONTENTS OF ANY ELECTRONIC MAIL OR ELECTRONIC DATA STORED IN SUCH SERVICE ACCOUNT UNLESS SUCH CONSENT AND AUTHORIZATION IS LIMITED BY SUCH NEW YORK USER THROUGH THE USE OF A METHOD AUTHORIZED BY SUBDIVISION THREE OF THIS SECTION. SUCH NOMINATION MAY NAME A SPECIFIC INDIVIDUAL, OR THE EXECUTOR OR PERSONAL REPRESENTATIVE FOR THE NEW YORK USER'S ESTATE.

2. FOR ANY ELECTRONIC MAIL ACCOUNT OR ELECTRONIC DATA STORAGE ACCOUNT OPENED ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN, THE SERVICE PROVIDER MAY PROVIDE A NEW YORK USER WITH THE OPTION TO NOMINATE AN INDIVIDUAL WHO SHALL BE AUTHORIZED TO ACCESS SUCH SERVICE ACCOUNT AFTER HIS OR HER DEATH. SUCH AUTHORIZATION SHALL BE DEEMED TO BE THE NEW YORK USER'S CONSENT TO THE NOMINEE'S ACCESS OF THE CONTENTS OF ANY ELECTRONIC MAIL OR ELECTRONIC DATA STORED IN SUCH SERVICE ACCOUNT UNLESS SUCH CONSENT AND AUTHORIZATION IS LIMITED BY SUCH NEW YORK USER THROUGH THE USE OF A METHOD AUTHORIZED BY SUBDIVISION THREE OF THIS SECTION. SUCH NOMINATION MAY NAME A SPECIFIC INDIVIDUAL, OR THE EXECUTOR OR PERSONAL REPRESENTATIVE FOR THE NEW YORK USER'S ESTATE.

3. A SERVICE PROVIDER MAY PROVIDE A NEW YORK USER WITH A METHOD OF DESIGNATING CERTAIN ELECTRONIC MAIL OR ELECTRONIC DATA FOR WHICH ACCESS IS NOT AUTHORIZED AND CONSENT TO ACCESS IS NOT GRANTED.

4. WHEN PRESENTING THE OPTION TO NOMINATE THAT IS DESCRIBED IN SUBDIVISIONS ONE AND TWO OF THIS SECTION, THE SERVICE PROVIDER SHALL INCLUDE A STATEMENT THAT NOMINATION OF AN INDIVIDUAL OTHER THAN THE EXECUTOR OR PERSONAL REPRESENTATIVE OF THE NEW YORK USER'S ESTATE WILL REQUIRE SUCH

INDIVIDUAL TO INDEMNIFY THE SERVICE PROVIDER FROM ANY LIABILITY ARISING OUT OF SUCH INDIVIDUAL'S ACCESS TO THE SERVICE ACCOUNT.

S 167-B. ELECTRONIC MAIL ACCOUNTS AND ELECTRONIC DATA STORAGE ACCOUNTS; ACCESS AFTER THE DEATH. 1. ANY PERSON, ENTITY, OR ORGANIZATION ENGAGING IN BUSINESS IN THIS STATE SHALL BE DEEMED TO HAVE GIVEN CONSENT TO, UPON THE DEATH OF A NEW YORK USER, ACCESS TO ANY ELECTRONIC MAIL OR ELECTRONIC DATA SENT TO SUCH NEW YORK USER PRIOR TO OR AFTER SUCH USER'S DEATH. SUCH CONSENT SHALL BE LIMITED TO ANY PERSON, INCLUDING THE EXECUTOR OR PERSONAL REPRESENTATIVE OF THE NEW YORK USER'S ESTATE, WHO HAS BEEN NOMINATED BY THE NEW YORK USER PURSUANT TO SECTION ONE HUNDRED SIXTY-SEVEN-A OF THIS ARTICLE OR WHO HAS BEEN GRANTED ACCESS TO THE SERVICE ACCOUNTS PURSUANT TO AN ORDER OF THE COURT THAT HAS JURISDICTION OVER THE DECEASED NEW YORK USER'S ESTATE.

2. WHEN A NEW YORK USER HAS AUTHORIZED ACCESS OF HIS OR HER ELECTRONIC MAIL ACCOUNT OR ELECTRONIC DATA STORAGE ACCOUNT, AS PROVIDED IN SECTION ONE HUNDRED SIXTY-SEVEN-A OF THIS ARTICLE, THE SERVICE PROVIDER SHALL GRANT SUCH ACCESS TO SUCH ACCOUNT IN ACCORDANCE WITH THE TERMS OF SUCH CONSENT.

3. WHEN A SERVICE PROVIDER HAS NOT PROVIDED A NEW YORK USER WITH THE ABILITY TO AUTHORIZE ACCESS TO SUCH USER'S SERVICE ACCOUNT BY A PERSON NOMINATED BY SUCH USER, AND SUCH NEW YORK USER IS DECEASED, SUCH SERVICE PROVIDER SHALL, UPON RECEIPT OF A COURT ORDER THAT GRANTS THE EXECUTOR OR PERSONAL REPRESENTATIVE ACCESS TO A DECEDENT'S SERVICE ACCOUNT AND ORDERS THE ESTATE TO INDEMNIFY SUCH PROVIDERS FROM ALL LIABILITY IN COMPLYING WITH SUCH ORDER, PROVIDE SUCH EXECUTOR OR PERSONAL REPRESENTATIVE WITH ACCESS TO THE DECEDENT'S STORAGE ACCOUNT.

S 167-C. ELECTRONIC MAIL ACCOUNTS AND ELECTRONIC DATA STORAGE ACCOUNTS; ACCOUNT TERMINATION UPON THE DEATH. 1. ANY PROVISION IN A SERVICE PROVIDER'S TERMS OF SERVICE OR OTHER CONTRACTUAL AGREEMENT WITH A NEW YORK USER AUTOMATICALLY TERMINATING SUCH ACCOUNT UPON THE DEATH OF THE NEW YORK USER SHALL BE VOID AS AGAINST PUBLIC POLICY.

2. A SERVICE PROVIDER SHALL TERMINATE A NEW YORK USER'S SERVICE ACCOUNT UPON A REQUEST FROM THE EXECUTOR OR PERSONAL REPRESENTATIVE OF THE NEW YORK USER'S ESTATE. WHEN THE NEW YORK USER IS DECEASED AND NO PERSON HOLDS A CURRENT APPOINTMENT AS EXECUTOR OR PERSONAL REPRESENTATIVE OF SUCH DECEASED NEW YORK USER'S ESTATE, TERMINATION OF A SERVICE ACCOUNT MAY BE REQUESTED BY THE DECEASED NEW YORK USER'S NEXT OF KIN, PROVIDED THAT SUCH INDIVIDUAL PROVIDES THE SERVICE PROVIDER WITH A COPY OF THE NEW YORK USER'S DEATH CERTIFICATE.

S 167-D. CONSUMER EDUCATION. THE CONSUMER PROTECTION DIVISION, IN CONSULTATION WITH THE DEPARTMENT OF FINANCIAL SERVICES, SHALL POST INFORMATION ON THE HOME PAGE OF THE DIVISION'S WEBSITE REGARDING THE IMPORTANCE OF ENSURING THAT ELECTRONIC MAIL ACCOUNTS AND ELECTRONIC DATA STORAGE ACCOUNTS CAN BE ACCESSED AFTER DEATH WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE. SUCH INFORMATION SHALL INCLUDE THE TYPES OF DATA OR INFORMATION THAT MAY NEED TO BE OBTAINED AFTER DEATH. SUCH DATA OR INFORMATION THAT MAY NEED TO BE OBTAINED AFTER DEATH INCLUDES, BUT IS NOT LIMITED TO, ELECTRONIC MAIL OR ELECTRONIC DATA REGARDING BANK, UTILITY, OR CREDIT ACCOUNTS, INSURANCE POLICIES, AND OTHER TRANSACTIONS AFFECTING AN ESTATE.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.