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I N   A S S E M B L Y

February 25, 2014

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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:

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

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

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

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

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

18    1. "ELECTRONIC" SHALL MEAN OF OR RELATING TO TECHNOLOGY HAVING ELEC-  
19    TRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMI-  
20    LAR CAPABILITIES.

21    2. "ELECTRONIC DATA" MEANS ANY DATA, IMAGES, PICTURES, SOUNDS, VIDEO,  
22    OR WRITING PRODUCED OR STORED BY ELECTRONIC MEANS AND CAPABLE OF BEING  
23    ACCURATELY REPRODUCED IN FORMS PERCEPTIBLE BY HUMAN SENSORY CAPABILI-  
24    TIES.

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

1 ACCURATELY REPRODUCED IN FORMS PERCEPTIBLE BY HUMAN SENSORY CAPABILI-  
2 TIES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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