

6176

I N S E N A T E

(PREFILED)

January 8, 2014

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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

3 S 11-1.12 POWER OF THE FIDUCIARY TO ACCESS ELECTRONIC MAIL AND ELECTRON-
4 IC INFORMATION STORAGE ACCOUNTS

5 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE EXECUTOR OR ADMIN-
6 ISTRATOR OF THE ESTATE OF A DECEASED PERSON WHO WAS DOMICILED IN THIS
7 STATE AT THE TIME OF HIS OR HER DEATH IS AUTHORIZED TO REQUEST ACCESS TO
8 OR COPIES OF THE CONTENTS OF THE DECEDENT'S ELECTRONIC MAIL ACCOUNTS AND
9 INFORMATION STORAGE ACCOUNTS FOR THE PURPOSES OF (1) ACCESSING THE
10 ELECTRONIC MAIL AND INFORMATION STORED IN SUCH ACCOUNTS; AND (2) CLOSING
11 SUCH ACCOUNTS; PROVIDED THAT SUCH ACCOUNTS SHALL BE CLOSED WITHIN SIXTY
12 DAYS OF THE DATE ACCESS TO SUCH ACCOUNTS IS GRANTED OR COPIES OF THE
13 CONTENTS OF SUCH ACCOUNTS ARE PROVIDED TO THE EXECUTOR OR ADMINISTRATOR;
14 AND PROVIDED FURTHER THAT AN EXECUTOR OR ADMINISTRATOR WHO IS GRANTED
15 ACCESS TO SUCH ACCOUNTS SHALL USE THE ACCOUNTS TO DOWNLOAD THE INFORMA-
16 TION CONTAINED IN SUCH ACCOUNTS AND TO PROVIDE NOTICE TO THIRD PARTIES
17 THAT THE ACCOUNT HOLDER IS DECEASED.

18 (B) AN ELECTRONIC MAIL SERVICE PROVIDER OR INFORMATION STORAGE SERVICE
19 PROVIDER WHO HAS RECEIVED FROM THE EXECUTOR OR ADMINISTRATOR OF THE
20 ESTATE OF A DECEASED PERSON WHO WAS DOMICILED IN THIS STATE AT THE TIME
21 OF HIS OR HER DEATH A REQUEST FOR ACCESS TO OR COPIES OF THE CONTENTS OF
22 THE DECEDENT'S ACCOUNT ACCOMPANIED BY EITHER (1) A WRITTEN REQUEST FOR
23 ACCESS OR COPIES MADE BY SUCH EXECUTOR OR ADMINISTRATOR, ACCOMPANIED BY
24 A COPY OF THE DEATH CERTIFICATE AND A CERTIFIED COPY OF THE CERTIFICATE
25 OF APPOINTMENT AS EXECUTOR OR ADMINISTRATOR; OR (2) AN ORDER OF THE
26 COURT HAVING JURISDICTION OF THE ESTATE OF SUCH DECEASED PERSON ORDERING

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

LBD13193-01-3

1 ACCESS OR COPIES OF THE ACCOUNT INFORMATION SHALL GRANT SUCH ACCESS OR
2 PROVIDE SUCH COPIES WITHIN THIRTY DAYS OF SUCH REQUEST.

3 (C) FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL MEAN:

4 (1) "ELECTRONIC MAIL ACCOUNT" MEANS: (A) ALL ELECTRONIC MAIL SENT OR
5 RECEIVED BY AN END-USER OF ELECTRONIC MAIL SERVICES PROVIDED BY AN ELEC-
6 TRONIC MAIL SERVICE PROVIDER THAT IS STORED OR RECORDED BY SUCH ELEC-
7 TRONIC MAIL SERVICE PROVIDER IN THE REGULAR COURSE OF PROVIDING SUCH
8 SERVICES; AND (B) ANY OTHER ELECTRONIC INFORMATION STORED OR RECORDED BY
9 SUCH ELECTRONIC MAIL SERVICE PROVIDER THAT IS DIRECTLY RELATED TO THE
10 ELECTRONIC MAIL SERVICES PROVIDED TO SUCH END-USER BY SUCH ELECTRONIC
11 MAIL SERVICE PROVIDER, INCLUDING, BUT NOT LIMITED TO, BILLING AND
12 PAYMENT INFORMATION.

13 (2) "ELECTRONIC MAIL SERVICE PROVIDER" MEANS ANY PERSON WHO (A) IS AN
14 INTERMEDIARY IN SENDING OR RECEIVING ELECTRONIC MAIL, AND (B) PROVIDES
15 TO END-USERS OF ELECTRONIC MAIL SERVICES THE ABILITY TO SEND OR RECEIVE
16 ELECTRONIC MAIL.

17 (3) "INFORMATION STORAGE ACCOUNT" MEANS ANY ACCOUNT HELD IN THE
18 DECEDENT'S NAME THAT WAS USED TO ELECTRONICALLY STORE DOCUMENTS,
19 PICTURES, INFORMATION, AND ELECTRONIC FILES, REGARDLESS OF WHETHER THE
20 DOCUMENTS, PICTURES, INFORMATION AND ELECTRONIC FILES WERE STORED BY THE
21 DECEDENT.

22 (4) "INFORMATION STORAGE SERVICE PROVIDER" MEANS ANY PERSON WHO
23 PROVIDES USERS WITH THE ABILITY TO STORE DOCUMENTS, PICTURES, INFORMA-
24 TION, AND ELECTRONIC FILES, INCLUDING, BUT NOT LIMITED TO CLOUD STORAGE,
25 SOCIAL NETWORKING WEBSITES, AND PHOTO SHARING WEBSITES.

26 (D) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE AN ELECTRON-
27 IC MAIL SERVICE PROVIDER OR INFORMATION STORAGE SERVICE PROVIDER TO
28 PROVIDE ACCESS TO ANY ACCOUNT OR TO DISCLOSE ANY INFORMATION:

29 (1) IN VIOLATION OF ANY APPLICABLE FEDERAL LAW; OR

30 (2) TO WHICH THE DECEASED PERSON WOULD NOT HAVE BEEN PERMITTED ACCESS
31 IN THE ORDINARY COURSE OF BUSINESS BY THE ELECTRONIC MAIL SERVICE
32 PROVIDER OR INFORMATION STORAGE SERVICE PROVIDER.

33 S 2. This act shall take effect immediately.