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

5438

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

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 trust law, the mental hygiene law, the surrogate's court procedure act and the general business law, in relation to decedent's electronic mail service 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 paragraph 22 is added to read as follows:

(22) WITH RESPECT TO A DECEDENT'S ELECTRONIC MAIL SERVICE ACCOUNTS, TO ENGAGE IN ACTIVITIES AUTHORIZED BY SECTION 11-1.12 OF THIS PART.

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 FIDUCIARY WITH REGARD TO A DECEDENT'S ELECTRONIC MAIL SERVICE ACCOUNT.

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

1. "ACCOUNT HOLDER" MEANS A NATURAL PERSON WHO HAS ENTERED INTO AN AGREEMENT WITH AN ELECTRONIC MAIL SERVICE PROVIDER FOR THE PROVISION OF AN ELECTRONIC MAIL ACCOUNT.

2. "CATALOG OF ELECTRONIC MAIL MESSAGES" MEANS A LIST OF EVERY ELECTRONIC MAIL MESSAGE RECEIVED BY, SENT FROM, AND STORED IN AN ELECTRONIC MAIL SERVICE ACCOUNT THAT INCLUDES THE HEADER INFORMATION FOR EACH ELECTRONIC MAIL MESSAGE ALONG WITH THE CORRESPONDING DATE THAT SUCH MESSAGE WAS SENT OR RECEIVED.

3. "COMMERCIAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC MAIL MESSAGE SENT IN THE ORDINARY COURSE OF BUSINESS THAT IS NOT A CONFIDENTIAL ELECTRONIC MAIL MESSAGE, AND THAT:

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

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(I) FACILITATES, COMPLETES, OR CONFIRMS A COMMERCIAL TRANSACTION THAT THE RECIPIENT HAS PREVIOUSLY AGREED TO ENTER INTO WITH THE SENDER;

(II) PROVIDES WARRANTY INFORMATION, PRODUCT RECALL INFORMATION, OR SAFETY OR SECURITY INFORMATION WITH RESPECT TO A COMMERCIAL PRODUCT OR SERVICE USED OR PURCHASED BY THE RECIPIENT;

(III) PROVIDES (I) NOTIFICATION CONCERNING A CHANGE IN THE TERMS OR FEATURES OF;

(II) NOTIFICATION OF A CHANGE IN THE RECIPIENT'S STANDING OR STATUS WITH RESPECT TO;

(III) AT REGULAR PERIODIC INTERVALS, ACCOUNT BALANCE INFORMATION, BILLING INFORMATION, OR OTHER TYPE OF ACCOUNT STATEMENT WITH RESPECT TO, A SUBSCRIPTION, MEMBERSHIP, ACCOUNT, LOAN, OR COMPARABLE ONGOING COMMERCIAL RELATIONSHIP INVOLVING THE ONGOING PURCHASE OR USE BY THE RECIPIENT OF PRODUCTS OR SERVICES OFFERED BY THE SENDER; OR

(IV) DELIVERS GOODS OR SERVICES, INCLUDING PRODUCT UPDATES OR UPGRADES, THAT THE RECIPIENT IS ENTITLED TO RECEIVE UNDER THE TERMS OF A TRANSACTION THAT THE RECIPIENT HAS PREVIOUSLY AGREED TO ENTER INTO WITH THE SENDER.

4. "CONFIDENTIAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC MAIL MESSAGE THAT IS PRIVILEGED DUE TO THE RELATIONSHIP BETWEEN THE SENDER AND RECIPIENT AND NOT SUBJECT TO DISCLOSURE PURSUANT TO THE LAWS OF THIS STATE WITHOUT A WAIVER OF SUCH PRIVILEGE.

5. "CONTENT" MEANS THE SUBSTANCE OF AN ELECTRONIC MAIL MESSAGE AND ANY ELECTRONIC DATA ATTACHED TO SUCH ELECTRONIC MAIL MESSAGE OTHER THAN HEADER INFORMATION.

6. "ELECTRONIC" MEANS OF OR RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

7. "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.

8. "ELECTRONIC MAIL ACCOUNT" MEANS AN ACCOUNT, OTHER THAN AN ACCOUNT PROVIDED BY AN EMPLOYER TO AN EMPLOYEE WITHIN THE SCOPE OF EMPLOYMENT, WITH AN ASSOCIATED ELECTRONIC MAIL ADDRESS FROM WHICH ELECTRONIC MAIL MESSAGES MAY BE SENT AND STORED, AND TO WHICH ELECTRONIC MAIL MESSAGES MAY BE RECEIVED AND STORED.

9. "ELECTRONIC MAIL ADDRESS" MEANS A DESTINATION, COMMONLY EXPRESSED AS A STRING OF CHARACTERS, CONSISTING OF A UNIQUE USER NAME OR MAILBOX AND A REFERENCE TO AN INTERNET DOMAIN, WHETHER OR NOT DISPLAYED, TO WHICH ELECTRONIC MAIL CAN BE SENT OR DELIVERED.

10. "ELECTRONIC MAIL MESSAGE" MEANS ELECTRONIC DATA THAT IS TRANSMITTED FROM ONE ELECTRONIC MAIL ADDRESS TO ANOTHER ELECTRONIC MAIL ADDRESS FOR THE PURPOSE OF COMMUNICATION.

11. "ELECTRONIC MAIL SERVICE PROVIDER" MEANS A NATURAL PERSON OR ENTITY THAT, IN THE REGULAR COURSE OF BUSINESS, OFFERS ELECTRONIC MAIL ACCOUNTS TO THE GENERAL PUBLIC.

12. "ENTITY" MEANS AN ASSOCIATION, COMPANY, FIRM, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, SOLE PROPRIETORSHIP AND ANY OTHER FORM OF LEGALLY RECOGNIZED ENTITY, OTHER THAN A STATE OR LOCAL GOVERNMENT.

13. "HEADER INFORMATION" MEANS THE ELECTRONIC DATA PROVIDING SOURCE, DESTINATION, ROUTING AND DELIVERY DATE INFORMATION THAT IS ATTACHED TO AN ELECTRONIC MAIL MESSAGE, INCLUDING THE ORIGINATING DOMAIN NAME AND ORIGINATING ELECTRONIC MAIL ADDRESS, AND ANY OTHER INFORMATION THAT

APPEARS IN THE LINE IDENTIFYING, OR PURPORTING TO IDENTIFY, A PERSON INITIATING THE MESSAGE.

14. "INDIVIDUAL" MEANS A NATURAL PERSON.

15. "PERSONAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC MAIL MESSAGE THAT IS EITHER SENT FROM ONE INDIVIDUAL TO ANOTHER INDIVIDUAL THAT DOES NOT INCLUDE ANY ELEMENTS OF A COMMERCIAL ELECTRONIC MAIL MESSAGE OR A CONFIDENTIAL ELECTRONIC MAIL MESSAGE, REGARDLESS OF WHETHER THE MESSAGE IS SENT DIRECTLY BY THE SENDER OR FORWARDED BY OR SENT THROUGH A SERVICE THAT OFFERS MEMBERS OR SUBSCRIBERS THE OPPORTUNITY TO COMMUNICATE USING ELECTRONIC MAIL MESSAGES.

(B) REQUEST FOR A CATALOG OF ELECTRONIC MAIL MESSAGES. UNLESS EXPRESSLY PROHIBITED IN THE WILL OR OTHER INSTRUMENT, THE PERSONAL REPRESENTATIVE OR OTHER PERSON ACTING IN A FIDUCIARY CAPACITY WITH RESPECT TO A DECEDENT'S ESTATE, HEREINAFTER CALLED THE "FIDUCIARY", SHALL BE AUTHORIZED TO REQUEST A CATALOG OF ELECTRONIC MAIL MESSAGES AND OTHER INFORMATION PERTAINING TO THE DECEDENT'S ELECTRONIC MAIL SERVICE ACCOUNT WHEN SUCH REQUEST IS NECESSARY FOR THE ADMINISTRATION OF THE ESTATE. SUCH A REQUEST SHALL NOT INCLUDE A REQUEST FOR DISCLOSURE OF THE CONTENT OF ANY ELECTRONIC MAIL MESSAGE IN SUCH ACCOUNT OR ANY OTHER INFORMATION FOR WHICH DISCLOSURE TO ANY PERSON IS NOT AUTHORIZED PURSUANT TO FEDERAL LAW.

(C) REQUEST FOR DISCLOSURE OF THE CONTENT OF COMMERCIAL ELECTRONIC MAIL MESSAGES. AFTER RECEIPT AND REVIEW OF THE CATALOG OF ELECTRONIC MAIL MESSAGES RECEIVED FROM THE DECEDENT'S ELECTRONIC MAIL SERVICE PROVIDER, THE FIDUCIARY MAY PETITION THE COURT FOR AN ORDER PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED SIXTEEN OF THE SURROGATE'S COURTS PROCEDURE ACT TO REQUIRE THE ELECTRONIC MAIL SERVICE PROVIDER TO DISCLOSE THE HEADER AND CONTENT OF SPECIFIC COMMERCIAL ELECTRONIC MAIL MESSAGES WHEN SUCH DISCLOSURE IS NECESSARY FOR THE ADMINISTRATION OF THE ESTATE. ANY ORDER OF THE COURT SHALL REQUIRE THE ESTATE TO INDEMNIFY THE ELECTRONIC MAIL SERVICE PROVIDER FROM ALL LIABILITY IN COMPLYING WITH SUCH ORDER.

(D) PERSONAL ELECTRONIC MAIL MESSAGES AND CONFIDENTIAL ELECTRONIC MAIL MESSAGES. THE FIDUCIARY IS NOT AUTHORIZED TO PETITION THE COURT TO REQUEST DISCLOSURE OF THE CONTENT OF ANY PERSONAL ELECTRONIC MAIL MESSAGES OR CONFIDENTIAL ELECTRONIC MAIL MESSAGES LISTED IN ANY CATALOG OF ELECTRONIC MAIL MESSAGES RECEIVED BY SUCH FIDUCIARY.

(E) DECEDENT'S CONSENT TO THE DISCLOSURE OF CONTENT OF ELECTRONIC MAIL MESSAGES. WHEN, IN ACCORDANCE WITH SECTION ONE HUNDRED SIXTY-SEVEN-A OF THE GENERAL BUSINESS LAW, AN ELECTRONIC MAIL SERVICE PROVIDER OFFERED A DECEDENT THE OPPORTUNITY TO CONSENT TO AND AUTHORIZE THE DISCLOSURE OF THE CONTENT OF THE ELECTRONIC MAIL MESSAGES STORED IN HIS OR HER ELECTRONIC MAIL SERVICES ACCOUNT TO AN INDIVIDUAL AND THE DECEDENT EXERCISED SUCH OPTION IN FAVOR OF AN INDIVIDUAL WHO IS SERVING AS A FIDUCIARY FOR THE DECEDENT'S ESTATE, SUCH INDIVIDUAL SHALL HAVE THE POWER TO SEEK DISCLOSURE OF THE CONTENT OF ANY ELECTRONIC MAIL MESSAGES STORED IN THE DECEDENT'S ELECTRONIC MAIL SERVICE ACCOUNT WITHOUT FIRST OBTAINING AN ORDER FROM THE COURT.

(F) TIME PERIOD FOR PRODUCTION OF A CATALOG OF ELECTRONIC MAIL MESSAGES. WHEN A REQUEST FOR A CATALOG OF ELECTRONIC MAIL MESSAGES HAS BEEN MADE PURSUANT TO THIS SECTION, AN ELECTRONIC MAIL SERVICES PROVIDER MAY REQUIRE THE FIDUCIARY TO PROVIDE A COPY OF THE ORDER OF THE COURT APPOINTING HIM OR HER FIDUCIARY OF THE DECEDENT'S ESTATE, A COPY OF THE DECEDENT'S DEATH CERTIFICATE, AND ANY OTHER INFORMATION THAT IS NECESSARY FOR SUCH SERVICE PROVIDER TO COMPLETE THE REQUEST. UPON RECEIPT OF SUCH INFORMATION, THE ELECTRONIC MAIL SERVICE PROVIDER SHALL PROVIDE THE

REQUESTING FIDUCIARY WITH A CATALOG OF ELECTRONIC MAIL MESSAGES WITHIN THIRTY DAYS.

S 3. Paragraph 20 of subdivision (a) of section 81.21 of the mental hygiene law is renumbered paragraph 21 and a new paragraph 20 is added to read as follows:

20. WITH RESPECT TO AN INCAPACITATED PERSON'S ELECTRONIC MAIL SERVICE ACCOUNTS, TO ENGAGE IN ACTIVITIES AUTHORIZED BY SECTION 81.45 OF THIS ARTICLE; AND

S 4. Paragraph 19 of subdivision (a) of section 81.21 of the mental hygiene law, as added by chapter 438 of the laws of 2004, is amended to read as follows.

19. pay bills after the death of the incapacitated person provided the authority existed to pay such bills prior to death until a temporary administrator or executor is appointed; [and]

S 5. Subdivision (g) of section 81.44 of the mental hygiene law, as added by chapter 175 of the laws of 2008, is relettered subdivision (h) and amended and a new subdivision (g) is added to read as follows:

(G) WITHIN ONE HUNDRED FIFTY DAYS OF THE INCAPACITATED PERSON'S DEATH, THE GUARDIAN SHALL SERVE UPON THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE OR WHERE THERE IS NO PERSONAL REPRESENTATIVE, UPON THE PUBLIC ADMINISTRATOR OR CHIEF FISCAL OFFICER, COPIES OF ALL CATALOGS OF ELECTRONIC MAIL MESSAGES RECEIVED BY THE GUARDIAN PURSUANT TO SECTION 82.21 OF THIS ARTICLE AND COPIES OF ALL ELECTRONIC MAIL MESSAGES DISCLOSED TO THE GUARDIAN PURSUANT TO SECTION 81.45 OF THIS ARTICLE. THERE SHALL BE NO EXTENSION OF THE TIME TO FILE A FINAL REPORT EXCEPT BY ORDER OF THE COURT.

(h) Upon failure of the guardian to comply with subdivisions (d) [or], (f) OR (G) of this section, any person entitled to notice of this proceeding may file a petition to compel the guardian to account, to suspend and/or remove the guardian, and to take and state the guardian's account.

S 6. The mental hygiene law is amended by adding a new section 81.45 to read as follows:

S 81.45 LIMITED POWER OF THE GUARDIAN TO OBTAIN DISCLOSURE OF THE CONTENT OF THE INCOMPETENT PERSON'S ELECTRONIC MAIL MESSAGES.

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

1. "ACCOUNT HOLDER" MEANS A NATURAL PERSON WHO HAS ENTERED INTO AN AGREEMENT WITH AN ELECTRONIC MAIL SERVICE PROVIDER FOR THE PROVISION OF AN ELECTRONIC MAIL ACCOUNT.

2. "CATALOG OF ELECTRONIC MAIL MESSAGES" MEANS A LIST OF EVERY ELECTRONIC MAIL MESSAGE RECEIVED BY, SENT FROM, AND STORED IN AN ELECTRONIC MAIL SERVICE ACCOUNT THAT INCLUDES THE HEADER INFORMATION FOR EACH ELECTRONIC MAIL MESSAGE ALONG WITH THE CORRESPONDING DATE THAT SUCH MESSAGE WAS SENT OR RECEIVED.

3. "COMMERCIAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC MAIL MESSAGE SENT IN THE ORDINARY COURSE OF BUSINESS THAT IS NOT A CONFIDENTIAL ELECTRONIC MAIL MESSAGE, AND THAT:

(I) FACILITATES, COMPLETES, OR CONFIRMS A COMMERCIAL TRANSACTION THAT THE RECIPIENT HAS PREVIOUSLY AGREED TO ENTER INTO WITH THE SENDER;

(II) PROVIDES WARRANTY INFORMATION, PRODUCT RECALL INFORMATION, OR SAFETY OR SECURITY INFORMATION WITH RESPECT TO A COMMERCIAL PRODUCT OR SERVICE USED OR PURCHASED BY THE RECIPIENT;

(III) PROVIDES (I) NOTIFICATION CONCERNING A CHANGE IN THE TERMS OR FEATURES OF;

(II) NOTIFICATION OF A CHANGE IN THE RECIPIENT'S STANDING OR STATUS WITH RESPECT TO;

(III) AT REGULAR PERIODIC INTERVALS, ACCOUNT BALANCE INFORMATION, BILLING INFORMATION, OR OTHER TYPE OF ACCOUNT STATEMENT WITH RESPECT TO, A SUBSCRIPTION, MEMBERSHIP, ACCOUNT, LOAN, OR COMPARABLE ONGOING COMMERCIAL RELATIONSHIP INVOLVING THE ONGOING PURCHASE OR USE BY THE RECIPIENT OF PRODUCTS OR SERVICES OFFERED BY THE SENDER; OR

(IV) DELIVERS GOODS OR SERVICES, INCLUDING PRODUCT UPDATES OR UPGRADES, THAT THE RECIPIENT IS ENTITLED TO RECEIVE UNDER THE TERMS OF A TRANSACTION THAT THE RECIPIENT HAS PREVIOUSLY AGREED TO ENTER INTO WITH THE SENDER.

4. "CONFIDENTIAL ELECTRONIC MAIL MESSAGE" MEANS AND ELECTRONIC MAIL MESSAGE THAT IS PRIVILEGED DUE TO THE RELATIONSHIP BETWEEN THE SENDER AND RECIPIENT AND NOT SUBJECT TO DISCLOSURE PURSUANT TO THE LAWS OF THIS STATE WITHOUT A WAIVER OF SUCH PRIVILEGE.

5. "CONTENT" MEANS THE SUBSTANCE OF AN ELECTRONIC MAIL MESSAGE AND ANY ELECTRONIC DATA ATTACHED TO SUCH ELECTRONIC MAIL MESSAGE OTHER THAN HEADER INFORMATION.

6. "ELECTRONIC" MEANS OF OR RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

7. "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.

8. "ELECTRONIC MAIL ACCOUNT" MEANS AN ACCOUNT, OTHER THAN AN ACCOUNT PROVIDED BY AN EMPLOYER TO AN EMPLOYEE WITHIN THE SCOPE OF EMPLOYMENT, WITH AN ASSOCIATED ELECTRONIC MAIL ADDRESS FROM WHICH ELECTRONIC MAIL MESSAGES MAY BE SENT AND STORED, AND TO WHICH ELECTRONIC MAIL MESSAGES MAY BE RECEIVED AND STORED.

9. "ELECTRONIC MAIL ADDRESS" MEANS A DESTINATION, COMMONLY EXPRESSED AS A STRING OF CHARACTERS, CONSISTING OF A UNIQUE USER NAME OR MAILBOX AND A REFERENCE TO AN INTERNET DOMAIN, WHETHER OR NOT DISPLAYED, TO WHICH ELECTRONIC MAIL CAN BE SENT OR DELIVERED.

10. "ELECTRONIC MAIL MESSAGE" MEANS ELECTRONIC DATA THAT IS TRANSMITTED FROM ONE ELECTRONIC MAIL ADDRESS TO ANOTHER ELECTRONIC MAIL ADDRESS FOR THE PURPOSE OF COMMUNICATION.

11. "ELECTRONIC MAIL SERVICE PROVIDER" MEANS A NATURAL PERSON OR ENTITY THAT, IN THE REGULAR COURSE OF BUSINESS, OFFERS ELECTRONIC MAIL ACCOUNTS TO THE GENERAL PUBLIC.

12. "ENTITY" MEANS AN ASSOCIATION, COMPANY, FILM, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, SOLE PROPRIETORSHIP AND ANY OTHER FORM OF LEGALLY RECOGNIZED ENTITY, OTHER THAN STATE OR LOCAL GOVERNMENT.

13. "HEADER INFORMATION" MEANS THE ELECTRONIC DATA PROVIDING SOURCE, DESTINATION, ROUTING AND DELIVERY DATE INFORMATION THAT IS ATTACHED TO AN ELECTRONIC MAIL MESSAGE, INCLUDING THE ORIGINATING DOMAIN NAME AND ORIGINATING ELECTRONIC MAIL ADDRESS AND ANY OTHER INFORMATION THAT APPEARS IN THE LINE IDENTIFYING, OR PURPORTING TO IDENTIFY, A PERSON INITIATING THE MESSAGE.

14. "INDIVIDUAL" MEANS A NATURAL PERSON.

15. "PERSONAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC MAIL MESSAGE THAT IS EITHER SENT FROM ONE INDIVIDUAL TO ANOTHER INDIVIDUAL THAT DOES NOT INCLUDE ANY ELEMENTS OF A COMMERCIAL ELECTRONIC MAIL MESSAGE OR A CONFIDENTIAL ELECTRONIC MAIL MESSAGE, REGARDLESS OF WHETHER THE MESSAGE IS SENT DIRECTLY BY THE SENDER OR FORWARDED BY OR SENT

THROUGH A SERVICE THAT OFFERS MEMBERS OR SUBSCRIBES THE OPPORTUNITY TO COMMUNICATE USING ELECTRONIC MAIL MESSAGES.

(B) REQUEST FOR A CATALOG OF ELECTRONIC MAIL MESSAGES. THE INDIVIDUAL WHO HAS BEEN APPOINTED GUARDIAN FOR AN INCAPACITATED PERSON SHALL BE AUTHORIZED TO REQUEST A CATALOG OF ELECTRONIC MAIL MESSAGES AND OTHER INFORMATION PERTAINING TO SUCH INCAPACITATED PERSON'S ELECTRONIC MAIL SERVICE ACCOUNT WHEN SUCH REQUEST IS NECESSARY OR APPROPRIATE FOR THE PROPER MANAGEMENT OF THE INCAPACITATED PERSON'S PROPERTY OR FINANCIAL AFFAIRS. SUCH A REQUEST SHALL NOT INCLUDE A REQUEST FOR DISCLOSURE OF THE CONTENTS OF ANY ELECTRONIC MAIL MESSAGE IN SUCH ACCOUNT OR ANY OTHER INFORMATION FOR WHICH DISCLOSURE TO ANY PERSON IS NOT AUTHORIZED PURSUANT TO FEDERAL LAW.

(C) REQUEST FOR DISCLOSURE OF THE CONTENT OF COMMERCIAL ELECTRONIC MAIL MESSAGES. TO THE EXTENT THAT IT IS CONSISTENT WITH THE AUTHORITY OTHERWISE GRANTED BY THE COURT A GUARDIAN, AFTER RECEIPT AND REVIEW OF THE CATALOG OF ELECTRONIC MAIL MESSAGES RECEIVED FROM THE INCAPACITATED PERSON'S ELECTRONIC MAIL SERVICE PROVIDER, MAY COMMENCE A PROCEEDING IN THE COURT WHICH APPOINTED THE GUARDIAN TO REQUIRE THE DISCLOSURE OF THE HEADER AND CONTENT OF SPECIFIC COMMERCIAL ELECTRONIC MAIL MESSAGES WHEN SUCH DISCLOSURE IS NECESSARY OR APPROPRIATE FOR THE PROPER MANAGEMENT OF THE INCAPACITATED PERSON'S PROPERTY OR FINANCIAL AFFAIRS. ANY ORDER OF THE COURT SHALL NOT AUTHORIZE THE DISCLOSURE OF PERSONAL ELECTRONIC MAIL MESSAGES OR CONFIDENTIAL ELECTRONIC MAIL MESSAGES AND SHALL REQUIRE THE GUARDIAN TO INDEMNIFY THE ELECTRONIC MAIL SERVICE PROVIDER FROM ALL LIABILITY IN COMPLYING WITH SUCH ORDER.

(D) PERSONAL ELECTRONIC MAIL MESSAGES AND CONFIDENTIAL ELECTRONIC MAIL MESSAGES. A GUARDIAN IS NOT AUTHORIZED TO PETITION THE COURT TO PRAY FOR AN ORDER REQUIRING DISCLOSURE OF THE CONTENT OF ANY PERSONAL ELECTRONIC MAIL MESSAGES OR CONFIDENTIAL ELECTRONIC MAIL MESSAGES LISTED IN ANY CATALOG OF ELECTRONIC MAIL MESSAGES RECEIVED BY SUCH GUARDIAN.

S 7. The surrogate's court procedure act is amended by adding a new section 2116 to read as follows:

S 2116. PROCEEDING BY FIDUCIARY TO COMPEL DISCLOSURE OF THE CONTENT OF COMMERCIAL ELECTRONIC MAIL MESSAGES

1. A FIDUCIARY WHO IS IN RECEIPT OF THE CATALOG OF ELECTRONIC MAIL MESSAGES FROM AN ELECTRONIC MAIL ACCOUNT HELD BY THE DECEDENT AND BELIEVES THAT THE CONTENT OF ONE OR MORE OF THE COMMERCIAL ELECTRONIC MAIL MESSAGES LISTED IN SUCH CATALOG IS NECESSARY FOR THE ADMINISTRATION OF THE ESTATE MAY PRESENT TO THE COURT WHICH HAS JURISDICTION OVER THE ESTATE A PETITION SHOWING THE FACTS, INCLUDING THE NECESSITY FOR DISCLOSURE, AND PRAYING THAT THE COURT ISSUE AN ORDER DIRECTING THE DISCLOSURE OF THE CONTENT OF SUCH ELECTRONIC MAIL MESSAGES.

2. IF THE COURT IS SATISFIED THAT (A) AN ELECTRONIC MAIL MESSAGE LISTED IN THE PETITION IS A COMMERCIAL ELECTRONIC MAIL MESSAGE AND NOT A CONFIDENTIAL ELECTRONIC MAIL MESSAGE OR A PERSONAL ELECTRONIC MAIL MESSAGE, AND (B) THE DISCLOSURE OF THE CONTENT OF SUCH COMMERCIAL ELECTRONIC MAIL MESSAGES IS NECESSARY FOR ADMINISTRATION OF THE ESTATE, THE COURT SHALL ISSUE AN ORDER DIRECTING THE DISCLOSURE OF THE HEADER INFORMATION AND CONTENT OF SUCH COMMERCIAL ELECTRONIC MAIL MESSAGE AND INDEMNIFYING THE ELECTRONIC MAIL SERVICE PROVIDER FROM ANY LIABILITY INCURRED DUE TO SUCH DISCLOSURE.

3. IF THE COURT FINDS THAT THE PETITION SEEKS DISCLOSURE OF THE CONTENT OF ONE OR MORE ELECTRONIC MAIL MESSAGES THAT ARE NOT COMMERCIAL ELECTRONIC MAIL MESSAGES, THE COURT SHALL EXCLUDE SUCH ELECTRONIC MAIL MESSAGES FROM ITS ORDER.

4. THE COURT SHALL REQUIRE A BOND NOTWITHSTANDING THAT THE WILL AUTHORIZED AN EXECUTOR TO SERVE WITHOUT BOND.

5. THE TERMS "CATALOG OF ELECTRONIC MAIL MESSAGES," "COMMERCIAL ELECTRONIC MAIL MESSAGES," "CONFIDENTIAL ELECTRONIC MAIL MESSAGES," "CONTENT," "ELECTRONIC MAIL ACCOUNT," "ELECTRONIC MAIL SERVICE PROVIDER," AND "PERSONAL ELECTRONIC MAIL MESSAGES" SHALL HAVE THE SAME MEANING AS IN SECTION 11-1.12 OF THE ESTATES, POWERS AND TRUSTS LAW.

S 8. The general business law is amended by adding a new article 10-C to read as follows:

ARTICLE 10-C

ELECTRONIC MAIL ACCOUNT SERVICES

SECTION 167. DEFINITIONS.

167-A. ELECTRONIC MAIL ACCOUNTS; CONSENT TO DISCLOSURE OF CONTENT AFTER DEATH.

167-B. CONSENT TO THE DISCLOSURE OF COMMERCIAL ELECTRONIC MAIL MESSAGE CONTENT.

167-C. DISCLOSURE OF ELECTRONIC MAIL MESSAGE CONTENT TO A NOMINEE.

167-D. ELECTRONIC MAIL ACCOUNTS; ACCOUNT TERMINATION UPON DEATH.

167-E. CONSUMER EDUCATION.

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

1. "ACCOUNT HOLDER" MEANS A NATURAL PERSON WHO HAS ENTERED INTO AN AGREEMENT WITH AN ELECTRONIC MAIL SERVICE PROVIDER FOR THE PROVISION OF AN ELECTRONIC MAIL ACCOUNT.

2. "CATALOG OF ELECTRONIC MAIL MESSAGES" MEANS A LIST OF EVERY ELECTRONIC MAIL MESSAGE RECEIVED BY, SENT FROM, AND STORED IN AN ELECTRONIC MAIL SERVICE ACCOUNT THAT INCLUDES THE HEADER INFORMATION FOR EACH ELECTRONIC MAIL MESSAGE ALONG WITH THE CORRESPONDING DATE THAT SUCH MESSAGE WAS SENT OR RECEIVED.

3. "COMMERCIAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC MAIL MESSAGE SENT IN THE ORDINARY COURSE OF BUSINESS THAT IS NOT A CONFIDENTIAL ELECTRONIC MAIL MESSAGE, AND THAT:

(I) FACILITATES, COMPLETES, OR CONFIRMS A COMMERCIAL TRANSACTION THAT THE RECIPIENT HAS PREVIOUSLY AGREED TO ENTER INTO WITH THE SENDER;

(II) PROVIDES WARRANTY INFORMATION, PRODUCT RECALL INFORMATION, OR SAFETY OR SECURITY INFORMATION WITH RESPECT TO A COMMERCIAL PRODUCT OR SERVICE USED OR PURCHASED BY THE RECIPIENT;

(III) PROVIDES (I) NOTIFICATION CONCERNING A CHANGE IN THE TERMS OR FEATURES OF;

(II) NOTIFICATION OF A CHANGE IN THE RECIPIENT'S STANDING OR STATUS WITH RESPECT TO;

(III) AT REGULAR PERIODIC INTERVALS, ACCOUNT BALANCE INFORMATION, BILLING INFORMATION, OR OTHER TYPE OF ACCOUNT STATEMENT WITH RESPECT TO, A SUBSCRIPTION, MEMBERSHIP, ACCOUNT, LOAN, OR COMPARABLE ONGOING COMMERCIAL RELATIONSHIP INVOLVING THE ONGOING PURCHASE OR USE BY THE RECIPIENT OF PRODUCTS OR SERVICES OFFERED BY THE SENDER; OR

(IV) DELIVERS GOODS OR SERVICES, INCLUDING PRODUCT UPDATES OR UPGRADES, THAT THE RECIPIENT IS ENTITLED TO RECEIVE UNDER THE TERMS OF A TRANSACTION THAT THE RECIPIENT HAS PREVIOUSLY AGREED TO ENTER INTO WITH THE SENDER.

4. "CONFIDENTIAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC MAIL MESSAGE THAT IS PRIVILEGED DUE TO THE RELATIONSHIP BETWEEN THE SENDER AND RECIPIENT AND NOT SUBJECT TO DISCLOSURE PURSUANT TO THE LAWS OF THIS STATE WITHOUT A WAIVER OF SUCH PRIVILEGE.

5. "CONTENT" MEANS THE SUBSTANCE OF AN ELECTRONIC MAIL MESSAGE AND ANY ELECTRONIC DATA ATTACHED TO SUCH ELECTRONIC MAIL MESSAGE OTHER THAN HEADER INFORMATION.

6. "ELECTRONIC" MEANS OF OR RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

7. "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.

8. "ELECTRONIC MAIL ACCOUNT" MEANS AN ACCOUNT, OTHER THAN AN ACCOUNT PROVIDED BY AN EMPLOYER TO AN EMPLOYEE WITHIN THE SCOPE OF EMPLOYMENT, WITH AN ASSOCIATED ELECTRONIC MAIL ADDRESS FROM WHICH ELECTRONIC MAIL MESSAGES MAY BE SENT AND STORED, AND TO WHICH ELECTRONIC MAIL MESSAGES MAY BE RECEIVED AND STORED.

9. "ELECTRONIC MAIL ADDRESS" MEANS A DESTINATION, COMMONLY EXPRESSED AS A STRING OF CHARACTERS, CONSISTING OF A UNIQUE USER NAME OR MAILBOX AND A REFERENCE TO AN INTERNET DOMAIN, WHETHER OR NOT DISPLAYED, TO WHICH ELECTRONIC MAIL CAN BE SENT OR DELIVERED.

10. "ELECTRONIC MAIL MESSAGE" MEANS ELECTRONIC DATA THAT IS TRANSMITTED FROM ONE ELECTRONIC MAIL ADDRESS TO ANOTHER ELECTRONIC MAIL ADDRESS FOR THE PURPOSE OF COMMUNICATION.

11. "ELECTRONIC MAIL SERVICE PROVIDER" MEANS A NATURAL PERSON OR ENTITY THAT, IN THE REGULAR COURSE OF BUSINESS, OFFERS ELECTRONIC MAIL ACCOUNTS TO THE GENERAL PUBLIC.

12. "ENTITY" MEANS AN ASSOCIATION, COMPANY, FIRM, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, SOLE PROPRIETORSHIP AND ANY OTHER FORM OF LEGALLY RECOGNIZED ENTITY, OTHER THAN A STATE OR LOCAL GOVERNMENT.

13. "HEADER INFORMATION" MEANS THE ELECTRONIC DATA PROVIDING SOURCE, DESTINATION, ROUTING AND DELIVERY DATE INFORMATION THAT IS ATTACHED TO AN ELECTRONIC MAIL MESSAGE, INCLUDING THE ORIGINATING DOMAIN NAME AND ORIGINATING ELECTRONIC MAIL ADDRESS, AND ANY OTHER INFORMATION THAT APPEARS IN THE LINE IDENTIFYING, OR PURPORTING TO IDENTIFY, A PERSON INITIATING THE MESSAGE.

14. "INDIVIDUAL" MEANS A NATURAL PERSON.

15. "PERSONAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC MAIL MESSAGE THAT IS EITHER SENT FROM ONE INDIVIDUAL TO ANOTHER INDIVIDUAL THAT DOES NOT INCLUDE ANY ELEMENTS OF A COMMERCIAL ELECTRONIC MAIL MESSAGE OR A CONFIDENTIAL ELECTRONIC MAIL MESSAGE, REGARDLESS OF WHETHER THE MESSAGE IS SENT DIRECTLY BY THE SENDER OR FORWARDED BY OR SENT THROUGH A SERVICE THAT OFFERS MEMBERS OR SUBSCRIBERS THE OPPORTUNITY TO COMMUNICATE USING ELECTRONIC MAIL MESSAGES.

S 167-A. ELECTRONIC MAIL ACCOUNTS; CONSENT TO DISCLOSURE OF CONTENT AFTER DEATH.

1. CONSENT TO DISCLOSE. (A) FOR ANY ELECTRONIC MAIL SERVICE ACCOUNT OPENED AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN, THE ELECTRONIC MAIL SERVICE PROVIDER MAY PROVIDE AN ACCOUNT HOLDER RESIDING IN THIS STATE WITH THE OPTION TO NOMINATE AN INDIVIDUAL TO RECEIVE THE CONTENT OF THE ELECTRONIC MAIL MESSAGES STORED IN HIS OR HER ELECTRONIC MAIL SERVICE ACCOUNT AFTER HIS OR HER DEATH. SUCH AUTHORIZATION SHALL BE DEEMED TO BE THE ACCOUNT HOLDER'S CONSENT TO THE ELECTRONIC MAIL SERVICE PROVIDER'S DISCLOSURE TO THE NOMINEE OF THE CONTENT OF ANY ELECTRONIC MAIL MESSAGES THAT ARE: (I) STORED IN SUCH ACCOUNT AT THE TIME OF HIS OR HER DEATH, INCLUDING ELECTRONIC MAIL MESSAGES THAT HAVE BEEN DELIV-

ERED BUT ARE UNREAD, AND (II) ELECTRONIC MAIL MESSAGES THAT ARE DELIVERED TO SUCH ACCOUNT AFTER HIS OR HER DEATH.

(B) FOR ANY ELECTRONIC MAIL SERVICE ACCOUNT OPENED BEFORE JANUARY FIRST, TWO THOUSAND SEVENTEEN, THE ELECTRONIC MAIL SERVICE PROVIDER MAY PROVIDE AN ACCOUNT HOLDER RESIDING IN THIS STATE WITH THE OPTION TO NOMINATE AN INDIVIDUAL TO RECEIVE THE CONTENT OF THE ELECTRONIC MAIL MESSAGES STORED IN HIS OR HER ELECTRONIC MAIL SERVICE ACCOUNT AFTER HIS OR HER DEATH. SUCH AUTHORIZATION SHALL BE DEEMED TO BE THE ACCOUNT HOLDER'S CONSENT TO THE ELECTRONIC MAIL SERVICE PROVIDERS' DISCLOSURE TO THE NOMINEE OF THE CONTENT OF ANY ELECTRIC MAIL MESSAGES THAT ARE: (I) STORED IN SUCH ACCOUNT AT THE TIME OF HIS OR HER DEATH, INCLUDING ELECTRONIC MAIL MESSAGES THAT HAVE BEEN DELIVERED BUT ARE UNREAD, AND (II) ELECTRONIC MAIL MESSAGES THAT ARE DELIVERED TO SUCH ACCOUNT AFTER HIS OR HER DEATH.

(C) AN ACCOUNT HOLDER SHALL BE DEEMED A RESIDENT OF THIS STATE FOR PURPOSES OF THIS SUBDIVISION IF HE OR SHE (I) PROVIDED THE ELECTRONIC MAIL SERVICE PROVIDER WITH A BILLING ADDRESS WITHIN THIS STATE AT THE TIME HE OR SHE OPENED THE ELECTRONIC MAIL SERVICE ACCOUNT, OR (II) IF A BILLING ADDRESS WAS NOT REQUIRED TO OPEN THE ELECTRONIC MAIL SERVICE, PROVIDED AN ADDRESS OR ZIP CODE WITHIN THIS STATE TO THE PROVIDER AT THE TIME THE ELECTRONIC MAIL SERVICE ACCOUNT WAS OPENED.

2. NOMINEE CHANGE AND REVOCATION. IF AN ELECTRONIC MAIL SERVICE PROVIDER PROVIDES RESIDENTS OF THIS STATE WITH THE OPPORTUNITY TO CONSENT TO DISCLOSURE PURSUANT TO SUBDIVISION ONE OF THIS SECTION, SUCH SERVICE PROVIDER SHALL ALSO PROVIDE THE ABILITY TO REVOKE A NOMINATION AND TO NOMINATE A DIFFERENT INDIVIDUAL. IF A NOMINATION IS REVOKED AND ANOTHER INDIVIDUAL IS NOT NOMINATED, THE CONSENT TO DISCLOSURE IS DEEMED TO BE REVOKED. SUCH REVOCATION WILL NOT PROHIBIT THE DISCLOSURE OF COMMERCIAL ELECTRONIC MAIL PURSUANT TO AN ORDER OF A COURT OF COMPETENT JURISDICTION.

3. PRESENTATION OF THE OPTION TO CONSENT TO DISCLOSURE. IF AN ELECTRONIC MAIL SERVICE PROVIDER AFFORDS RESIDENTS OF THIS STATE THE OPPORTUNITY TO AUTHORIZE DISCLOSURE PURSUANT TO SUBDIVISION ONE OF THIS SECTION, SUCH SERVICE PROVIDER SHALL INCLUDE THE FOLLOWING STATEMENTS OF SUBSTANTIALLY SIMILAR STATEMENTS;

(A) "IF YOU CHOOSE TO NOMINATE SOMEONE TO RECEIVE YOUR ELECTRONIC MAIL MESSAGES, YOU ARE GIVING YOUR CONSENT FOR THAT PERSON TO READ ALL OF THE ELECTRONIC MAIL MESSAGES, INCLUDING ATTACHMENTS, THAT ARE IN YOUR ACCOUNT IF YOU DIE."

(B) "YOU MAY CHANGE THE PERSON WHO YOU NAMED AS YOUR NOMINEE AT ANY TIME."

(C) "YOU MAY REVOKE YOUR NOMINATION OF A PERSON AT ANY TIME."

(D) "YOU ARE NOT REQUIRED TO NOMINATE ANYONE."

S 167-B. CONSENT TO THE DISCLOSURE OF COMMERCIAL ELECTRONIC MAIL MESSAGE CONTENT. A PERSON ENGAGING IN BUSINESS IN THIS STATE SHALL, UPON THE DEATH OF AN INDIVIDUAL RESIDING IN THIS STATE AT THE TIME OF HIS OR HER DEATH, BE DEEMED TO HAVE GIVEN CONSENT TO THE DISCLOSURE OF THE CONTENT OF ANY COMMERCIAL ELECTRONIC MAIL MESSAGE SENT BY OR ON BEHALF OF SUCH PERSON TO SUCH DECEDENT PRIOR TO OR AFTER HIS OR HER DEATH, PROVIDED THAT SUCH DISCLOSURE IS MADE PURSUANT TO SECTION ONE HUNDRED SIXTY-SEVEN-C OF THIS ARTICLE OR AN ORDER OF THE COURT THAT HAS JURISDICTION OVER THE DECEDENT'S ESTATE.

S 167-C. DISCLOSURE OF ELECTRONIC MAIL MESSAGE CONTENT TO A NOMINEE. PRIOR TO DISCLOSING THE CONTENT OF ELECTRONIC MAIL MESSAGES STORED IN AN ELECTRONIC MAIL ACCOUNT PURSUANT TO AN ELECTION MADE IN ACCORDANCE WITH SECTION ONE HUNDRED SIXTY SEVEN-B OF THIS ARTICLE, THE ELECTRONIC MAIL

SERVICE PROVIDER MAY REQUIRE THE NOMINEE TO PROVIDE (A) PROOF OF HIS OR HER IDENTITY, AND (B) PROOF THAT THE ACCOUNT HOLDER IS DECEASED. A CERTIFIED COPY OF THE ACCOUNT HOLDER'S DEATH CERTIFICATE SHALL CONSTITUTE SUFFICIENT PROOF OF DEATH.

S 167-D. ELECTRONIC MAIL ACCOUNTS; ACCOUNT TERMINATION UPON DEATH. 1. ANY PROVISION IN AN ELECTRONIC MAIL SERVICE PROVIDER'S TERMS OF SERVICE OR OTHER CONTRACTUAL AGREEMENT WITH AN ACCOUNT HOLDER WHO WAS A RESIDENT OF THIS STATE AT THE TIME OF HIS OR HER DEATH FOR THE PROVISION OF AN ELECTRONIC MAIL ACCOUNT THAT CAUSES THE DELETION OF ANY ELECTRONIC MAIL MESSAGES STORED IN SUCH ACCOUNT UPON THE DEATH OF THE ACCOUNT HOLDER SHALL BE VOID AS AGAINST PUBLIC POLICY.

2. UPON NOTIFICATION OF THE DEATH OF AN ACCOUNT HOLDER WHO WAS A RESIDENT OF THIS STATE AT THE TIME OF HIS OR HER DEATH, AN ELECTRONIC MAIL SERVICE PROVIDER SHALL RETAIN ALL ELECTRONIC MAIL MESSAGES IN SUCH ACCOUNT FOR A PERIOD OF NO LESS THAN SIX MONTHS FOLLOWING THE ACCOUNT HOLDER'S DEATH, PROVIDED THAT A LONGER RETENTION PERIOD IS NOT PRESCRIBED BY THE LAWS AND REGULATIONS OF THIS STATE, ANOTHER STATE, THE UNITED STATES, OR ANOTHER COUNTRY.

S 167-E. 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 CAN BE ACCESSED AFTER DEATH WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE. SUCH INFORMATION SHALL INCLUDE THE TYPES OF INFORMATION THAT MAY NEED TO BE OBTAINED AFTER DEATH, INCLUDING, BUT NOT LIMITED TO, ELECTRONIC MAIL MESSAGES REGARDING BANK, UTILITY, OR CREDIT ACCOUNTS, INSURANCE POLICIES, AND OTHER TRANSACTIONS AFFECTING AN ESTATE.

S 9. This act shall take effect on the ninetieth day after it shall have become a law.