

HOUSE No. 1314

The Commonwealth of Massachusetts

PRESENTED BY:

John V. Fernandes

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 passage of the accompanying bill:

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

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|-------------------------------|-----------------------|
| <i>John V. Fernandes</i> | <i>10th Worcester</i> |
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> |
| <i>Stephen L. DiNatale</i> | <i>3rd Worcester</i> |
| <i>Byron Rushing</i> | <i>9th Suffolk</i> |
| <i>Colleen M. Garry</i> | <i>36th Middlesex</i> |
| <i>Angelo J. Puppolo, Jr.</i> | <i>12th Hampden</i> |
| <i>Tackey Chan</i> | <i>2nd Norfolk</i> |
| <i>Louis L. Kafka</i> | <i>8th Norfolk</i> |
| <i>Frank I. Smizik</i> | <i>15th Norfolk</i> |
| <i>Kenneth I. Gordon</i> | <i>21st Middlesex</i> |
| <i>Robert M. Koczera</i> | <i>11th Bristol</i> |
| <i>James J. Dwyer</i> | <i>30th Middlesex</i> |
| <i>Josh S. Cutler</i> | <i>6th Plymouth</i> |
| <i>Michael D. Brady</i> | <i>9th Plymouth</i> |
| <i>Brian R. Mannal</i> | <i>2nd Barnstable</i> |
| <i>Thomas J. Calter</i> | <i>12th Plymouth</i> |
| <i>Thomas P. Conroy</i> | <i>13th Middlesex</i> |
| <i>Edward F. Coppinger</i> | <i>10th Suffolk</i> |

| | |
|--------------------------------|-----------------------|
| <i>Antonio F. D. Cabral</i> | <i>13th Bristol</i> |
| <i>Carolyn C. Dykema</i> | <i>8th Middlesex</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> |
| <i>Harold P. Naughton, Jr.</i> | <i>12th Worcester</i> |
| <i>Keiko M. Orrall</i> | <i>12th Bristol</i> |

HOUSE No. 1314

By Mr. Fernandes of Milford, a petition (accompanied by bill, House, No. 1314) of John V. Fernandes and others for legislation to provide certain access to electronic mail accounts of decedents in probating estates . The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION

SEE

□ □ SENATE
□ , NO. 2313 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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. Subsection (a) of section 3-715 of chapter 190B of the General Laws, as
2 appearing in the 2010 Official Edition, is hereby amended by adding the following paragraph:-
3 □ (28) gain reasonable access to the contents of an electronic mail account of the
4 decedent upon receipt by the electronic mail service provider of: (i) a notarized written request
5 for such access made by the personal representative, accompanied by a copy of the death
6 certificate and a certified copy of the letter of appointment as personal representative; or (ii) an
7 order of the probate court that has jurisdiction over the estate of the decedent. The electronic
8 mail service provider shall provide access to the requested records within 60 days of receipt of
9 the request. Failure of the provider to comply within said 60 days shall be a violation of this
10 paragraph, entitling the requestor to apply for an appropriate order of the court directing
11 compliance. This paragraph shall supersede provisions in the electronic mail service provider's
12 contractual limitations, terms and conditions or privacy policy; provided, however, that access to
13 the contents of an electronic mail account shall not be provided if the provider shows, by clear
14 and convincing evidence, that it offered opt-out language, separate and distinct from the standard
15 agreement or terms of service, whereby the decedent affirmatively declined to have the
16 decedent's electronic mail account released after death. This paragraph shall not supersede

17 language in the decedent’s will to the contrary. For purposes of this paragraph, the following
18 words shall, unless the context otherwise requires, have the following meanings:

19 □ “Electronic mail account”, all electronic mail sent, received or created by an end-user
20 of electronic mail services provided by an electronic mail service provider that is stored or
21 recorded by the provider in the regular course of such services and any other electronic
22 information stored or recorded by such provider that is directly related to the electronic mail
23 services provided to the end-user by such provider, including, but not limited to, billing and
24 payment information; provided, however, that this definition shall not apply to accounts created,
25 administered, or hosted by an employer for an employee and intended to be used for professional
26 purposes.

27 □ “Electronic mail service provider”, any person who is an intermediary in sending or
28 receiving electronic mail and who provides to end-users of electronic mail services the ability to
29 send or receive electronic mail.

30 □ SECTION 2. Said section 3-715 of said chapter 190B, as appearing, is hereby further
31 amended by striking out subsection (b) and inserting in place thereof the following subsection:-

32 □ (b) Except as restricted or otherwise provided by the will or by an order in a formal
33 proceeding and subject to the priorities stated in section 3-902, a special personal representative
34 acting reasonably for the benefit of the interested persons, may properly exercise only those
35 powers set forth in subsections (1), (2), (3), (5), (7), (12), (15), (18), (19), (20), (21), (22), (24),
36 (26) and (28) of paragraph (a).

37 □ SECTION 3. Paragraph (28) of subsection (a) and subsection (b) of section 3-715 of
38 chapter 190B of the General Laws shall apply to: (i) all electronic mail accounts existing on or
39 after the effective date of this act; and (ii) all instances in which the electronic mail account
40 contents have been preserved by the electronic mail service provider as of the effective date of
41 this act.

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