

SENATE No. 704

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

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 adoption of the accompanying bill:

An Act making corrective changes in certain general and special laws.

PETITION OF:

NAME:

Cynthia S. Creem

DISTRICT/ADDRESS:

SENATE No. 704

By Ms. Creem, a petition (accompanied by bill, Senate, No. 704) of Cynthia S. Creem for legislation to make corrective changes in certain general and special laws. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act making corrective changes in certain general and special laws.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to make corrective changes in certain general and special laws, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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. Section 1-401 of chapter 190B of the General Laws, as inserted
2 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the phrase “or in a
3 newspaper designated by the register of probate in a county identified by the court” after the
4 word “pending” in subsection (a)(3).

5 SECTION 2. Section 1-401 of chapter 190B of the General Laws, as inserted
6 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the sentence: “If
7 the objecting party is a Respondent as defined under section 5-101(23.5), the Respondent or the
8 Respondent’s appointed counsel shall file a written affidavit of objections to the proceeding,
9 stating the specific facts and grounds upon which the objection is based within 30 days after the
10 return date.” to the end of subsection (e).

11 SECTION 3. Section 1-404 of chapter 190B of the General Laws, as inserted
12 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (a) to
13 read: “(a) If, in a formal proceeding involving trusts or estates of decedents, minors, protected
14 persons, or incapacitated persons, and in judicially supervised settlements, or otherwise, a minor,
15 a protected person, an incapacitated person or a person not ascertained or not in being may be or
16 may become interested in any property, real or personal, or in the enforcement or defense of any
17 legal rights, the court in which any action, petition or proceeding of any kind relative to or
18 affecting any such estate or legal rights is pending may, upon the representation of any party
19 thereto, or of any person interested, appoint a suitable person to appear and act therein as
20 guardian ad litem or next friend of such minor, protected person, incapacitated person or person
21 not ascertained or not in being; and a judgment, order or decree in such proceedings, made after
22 such appointment, should be conclusive upon all persons for whom such guardian ad litem or
23 next friend was appointed.”

24 SECTION 4. Section 1-404 of chapter 190B of the General Laws, as inserted
25 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the last sentence
26 of subsection (d) to read: "Unless the spouse, heir or devisee is represented by someone other
27 than the petitioner or is under guardianship or conservatorship by someone other than the
28 petitioner, the Court shall appoint a guardian ad litem who shall receive notice of all
29 proceedings."

30 SECTION 5. Section 2-114 of chapter 190B of the General Laws, as inserted
31 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the following
32 sentence at the end of subsection (b): “The court may decree that the rights of succession to

property under this section (or under former section 7 of chapter 210 of the General Laws) shall vest in an adopted individual as of the date of the filing of the petition for adoption.”

SECTION 6. Section 2-603 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by replacing the words “by representation” with the words “per capita at each generation”.

SECTION 7. Section 2-702 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting the phrase “except for purposes of part 3 of article VI [Uniform TOD Security Registration Act] and” from subsection (a) and by deleting the phrase “and except for a security registered in beneficiary form (TOD) under part 3 of Article VI, Uniform TOD Security Registration Act” from subsection (b).

SECTION 8. Section 2-706 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting subsection (a); by renumbering subsections (b), (c) and (d) as (a), (b) and (c) respectively; and by changing the words “by representation” to read “per capita at each generation” wherever they appear.

SECTION 9. Section 2-707 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting subsection (a); by renumbering subsections (b) and (c) as (a) and (b) respectively; and by changing the words “by representation” to read “per capita at each generation” wherever they appear.

SECTION 10. Section 2-801 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting the phrase “receives without objection a benefit from such interest,” from subsection (h)(4) the second time

it appears, and by changing subsection (j) to read as follows: “(j) Except for the provisions of subsection (h), this section shall not abridge the right of any person to disclaim, waive, release, renounce or abandon any interest in property under any other statute or rule of law.”

SECTION 11. Section 3-108 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as follows:

Section 3-108. [Probate, Testacy and Appointment Proceedings; Ultimate Time Limit.]

No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator’s domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent’s death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent’s death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent’s death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person at any time within 3 years after the death of the person can be established; (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or 3 years from the decedent’s death; (4) an informal appointment or a formal testacy or

77 appointment proceeding may be commenced thereafter if no proceedings concerning the
78 succession or estate administration has occurred within the 3 year period after the decedent's
79 death, but the personal representative has no right to possess estate assets as provided in Section
80 3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims
81 other than expenses of administration may not be presented against the estate; and (5) a formal
82 testacy proceeding may be commenced at any time after 3 years from the decedent's death for
83 the purpose of establishing an instrument to direct or control the ownership of property passing
84 or distributable after the decedent's death from one other than the decedent when the property is
85 to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the
86 decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.
87 These limitations shall not apply to proceedings to construe probated wills or determine heirs of
88 an intestate. In cases under (1) or (2) above, the date on which a testacy or appointment
89 proceeding is properly commenced shall be deemed to be the date of the decedent's death for
90 purposes of other limitations provisions of this chapter which relate to the date of death.

91 SECTION 12. Section 3-203 of chapter 190B of the General Laws, as
92 inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing
93 subsection (e) to read as follows: "(e) Appointment of a person with priority, a person who is
94 nominated pursuant to subsection (c) of this section, or a person whose entitlement to
95 appointment results from renunciation by another person with priority may be made in either
96 formal or informal proceedings. Before formal appointment of one without priority, the court
97 must determine that those having priority, although given notice of the proceedings, have failed
98 to request appointment or to nominate another for appointment, and that administration is
99 necessary.

SECTION 13. Section 3-301 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the reference in subsection (a)(6) to “section 3-610(c)” to read “section 3-610” and by changing the words “and describe the priority of the petitioner” to “describe the priority of the nominee”.

SECTION 14. Section 3-605 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the first three sentences to read as follows: “Any person apparently having an interest in the estate worth in excess of \$5000, or any creditor having a claim in excess of \$5000, may make a written demand that a personal representative give sureties on his bond. The demand shall be filed with the court and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, sureties shall be required, but the requirement ceases if the person demanding sureties ceases to be interested in the estate, or if sureties are excused as provided in section 3-604.”

SECTION 15. Section 3-610 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as follows:

Section 3-610. [Resignation by Personal Representative]

A personal representative may resign his position by filing a written statement of resignation with the court after he or she has given at least 15 days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the

122 appointment and qualification of a successor representative and delivery of the assets to him or
123 her.

124 SECTION 16. Section 3-617 of chapter 190B of the General Laws, as inserted
125 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding after subsection
126 (b) the following subsection (c): “(c) Unless otherwise ordered by the court, the authority of any
127 personal representative previously appointed by the court or magistrate is suspended as long as a
128 special personal representative has authority.”

129 SECTION 17. Section 3-706 of chapter 190B of the General Laws, as inserted
130 by section 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as
131 follows:

132 Section 3-706. [Duty of Personal Representative; Inventory and Appraisement.]

133 (a) Within 3 months after appointment, a personal representative,
134 who is not a successor to another representative, shall prepare an inventory of the property
135 owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to
136 each listed item, its fair market value as of the date of death, and the type and amount of any
137 encumbrance that may exist with reference to any item.

138 (b) Within 3 months after appointment, a successor personal
139 representative shall prepare an inventory of the property of the estate listing it with reasonable
140 detail, and indicating as to each listed item, its fair market value as of the date of his or her
141 appointment, and the type and amount of any encumbrance that may exist with reference to any
142 item.

143 (c) The personal representative shall file with the court or mail to all
144 interested persons whose addresses are reasonably available a copy of the inventory. The
145 personal representative may also file the original of the inventory with the court.

146 SECTION 18. Section 3-1201 of chapter 190B of the General Laws, as
147 inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the
148 phrase “If an inhabitant of the commonwealth” in the first paragraph to read, “If a person
149 domiciled in the commonwealth”.

150 SECTION 19. Section 5-101 of chapter 190B of the General Laws, as inserted
151 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting: “(23.5)
152 “Respondent”, an individual for whom the appointment of a guardian or conservator or other
153 protective order is sought.” after subsection (23).

154 SECTION 20. Section 5-105 of chapter 190B of the General Laws, as inserted
155 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the phrase “in
156 the case of a nomination of by the will of a parent or spouse” in paragraph (2) of subsection (a)
157 to read, “in the case of a nomination by the will of a parent or spouse”.

158 SECTION 21. Section 5-106 of chapter 190B of the General Laws, as inserted
159 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the sentence
160 “Counsel for any indigent ward, incapacitated person or person to be protected shall be
161 compensated by the commonwealth.” in subsection (a) to read, “Counsel for any indigent ward,
162 incapacitated person or person to be protected shall be compensated by the commonwealth or the
163 petitioner as the court may order.”

164 SECTION 22. Section 5-107 of chapter 190B of the General Laws, as inserted
165 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the term “ill
166 person” to read “protected person” wherever it appears.

167 SECTION 23. Section 5-204 of chapter 190B of the General Laws, as inserted
168 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the term “over
169 the age of 14 years” in subsection (d) to read “14 or more years of age”.

170 SECTION 24. Section 5-206 of chapter 190B of the General Laws, as inserted
171 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the words “A
172 minor” in subsection (a) to read, “A minor 14 or more years of age”.

173 SECTION 25. Section 5-303 of chapter 190B of the General Laws, as inserted
174 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the phrase “the
175 petitioner shall attach a copy” in paragraph (9) of subsection (b) to read, “the petitioner shall file
176 with the petition”.

177 SECTION 26. Section 5-303 of chapter 190B of the General Laws, as inserted
178 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting “registered”
179 before the word “physician”, and by inserting “, certified psychiatric nurse clinical specialist,
180 nurse practitioner” after the word “physician” in subsection (c).

181 SECTION 27. Section 5-303 of chapter 190B of the General Laws, as inserted
182 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering subsection
183 (e) as (f) and adding the following subsection (e) after subsection (d): “(e) The court may require
184 additional medical or psychological testimony as to the mental and physical condition of the
185 person alleged to be incapacitated or disabled and may require him to submit to examination. It

may also appoint one or more persons expert in incapacity or disability, to examine such person and report their conclusions to the court.”

SECTION 28. Section 5-304 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the first clause of subsection (a) to read: “(a) In a proceeding for the appointment of a guardian or conservator or for protective order, notice shall be given by the petitioner to:”

SECTION 29. Section 5-304 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting “, if 14 or more years of age,” after the word “protected” in subsection (a)(1).

SECTION 30. Section 5-305 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing paragraph (1) of subsection (c) to read, “(1) the spouse of the incapacitated person or a person nominated pursuant to section 5-301(b);”.

SECTION 31. Section 5-306A of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding to the end of subsection (a) the following: “When approving and authorizing an antipsychotic medication treatment plan by order or decree, the court shall consider the testimony or affidavit of a licensed physician or certified psychiatric nurse clinical specialist regarding such plan.”, adding the words “minor or” before the words “incapacitated person” in subsection (c) each place where they appear, and by changing the first clause of subsection (d) to read, “(d) A minor 14 or more years of age or an incapacitated person is required to attend any hearing relative to authority to consent to treatment for which a substituted judgment determination is required, unless the court finds

that there exist extraordinary circumstances requiring the absence of the minor or incapacitated person in which event the attendance of his counsel shall suffice;”.

SECTION 32. Section 5-309 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the phrase: “of incapacitated persons” after the word “guardianships” in subsection (c).

SECTION 33. Section 5-309 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (g) to read: “(g) No guardian shall have the authority to admit an incapacitated person to a nursing facility except upon a specific finding by the court that such admission is in the incapacitated person's best interest or unless: (1) the admission is for 60 days or less, (2) any person authorized to sign a Medical Certificate recommends such admission, (3) all interested persons and the incapacitated person do not object, 4) on or before such admission a written Notice of Intent to Admit the Incapacitated Person to a Nursing Facility for Short Term Services has been filed by the guardian in the appointing court and a copy has been served in hand on the Incapacitated Person and provided to the Nursing Facility and 5) the Incapacitated Person is represented by counsel or counsel is appointed forthwith. The Notice of Intent to Admit the Incapacitated Person to a Nursing Facility for Short Term Services shall be on a form promulgated and approved by the Chief Justice of the Probate and Family Court.”

SECTION 34. Section 5-404 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (b)(11) to read: “(11) except for a conservatorship of a minor filed pursuant to section 5-401(b), a statement:

(A) that a medical certificate conforming to the provisions of section 5-303(c) dated and the examination having taken place within 30 days of the filing of the petition or, in the case of a person alleged to be mentally retarded, a clinical team report dated within 180 days of the filing of the petition, is in the possession of the court or accompanies the petition; or

(B) of the nature of any circumstance which makes it impossible to obtain a medical certificate or clinical team report which shall be supported by affidavit or affidavits meeting the requirements set forth in Massachusetts Rule of Civil Procedure 4.1(h), in which case the court may waive or postpone the requirement of filing of a medical certificate or clinical team report.

SECTION 35. Section 5-407 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering subsections (b)(5), (b)(6) and (b)(7) as (b)(6), (b)(7) and (b)(8) respectively; and by adding after subsection (b)(4) the following subsection (b)(5): “(5) any required clinical team report is dated and the examinations have taken place within 180 days prior to the filing of the petition;”

SECTION 36. Section 5-411 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the reference in subsection (a) to “sections 5-208, 5-305 and 5-410” to read “sections 5-208, 5-307 and 5-410.”

SECTION 37. Section 5-413 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the last sentence to read, “The court may order that such compensation be paid by any party or parties as it shall determine.”

251 SECTION 38. Section 5-418 of chapter 190B of the General Laws, as inserted
252 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the following
253 sentence at the end of subsection (e): “Such discharge shall forever exonerate the conservator
254 and his sureties from all liability under such decree unless his account is impeached for fraud or
255 manifest error.”

256 SECTION 39. Section 5-423 of chapter 190B of the General Laws, as inserted
257 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering the second
258 subsection (c) as subsection (d).

259 SECTION 40. Section 5-429 of chapter 190B of the General Laws, as inserted
260 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the word
261 “incapacitated” in subsection (b) to read, “disabled”.

262 SECTION 41. Section 15 of chapter 521 of the Acts of 2008 is changed to read as
263 follows: “Sections 1-8, inclusive, of chapter 196 of the General Laws are hereby repealed.”

264 SECTION 42. The following new section 27A is added after section 27 of
265 chapter 521 of the Acts of 2008: “SECTION 27A: Section 3 of chapter 203A of the General
266 Laws is hereby amended by deleting the third sentence (beginning with the word ‘Application’
267 and ending with the word ‘six.’).”

268 SECTION 43. Section 39 of chapter 521 of the Acts of 2008 is hereby
269 changed to read as follows: “Section 7 of chapter 210 of the General Laws is hereby repealed.”

270 SECTION 44. The following new section 39A is added after section 39 of
271 chapter 521 of the Acts of 2008: “SECTION 39A. Section 8 of chapter 210 of the General Laws
272 is hereby repealed.”

273 SECTION 45. The following new section 40A is added after section 40 of
274 chapter 521 of the Acts of 2008: “Section 21 of chapter 246 of the General Laws is hereby
275 repealed.”

276 SECTION 46. Clause 1 of section 43 of chapter 521 of the Acts of 2008 is
277 hereby changed to read as follows: “1. this act shall apply to pre-existing governing
278 instruments, except that, subject to the provisions of clause 5 below, none of its provisions other
279 than Article VII (and provisions incorporated through Article VII) shall apply to governing
280 instruments that became irrevocable prior to the effective date of this act;”.