

**SENATE . . . . . No. 754**

---

**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 allowing access to a decedent's electronic mail accounts.

PETITION OF:

NAME:

*Cynthia S. Creem*

DISTRICT/ADDRESS:

**SENATE . . . . . No. 754**

---

By Ms. Creem, a petition (accompanied by bill, Senate, No. 754) of Cynthia S. Creem for legislation to allow access to a decedent's electronic mail accounts. The Judiciary.

---

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the Year Two Thousand Eleven**  
\_\_\_\_\_

An Act allowing 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. Paragraph (a) of section 3-715 of chapter 190B of the General  
2   Laws, as appearing in the 2008 Official Edition, is hereby amended by adding at the end thereof  
3   the following sub-section:-  
  
4                   (28) gain reasonable access to the contents of the electronic mail account, as  
5   defined in section 5A of chapter 195, of the decedent upon receipt by the electronic mail service  
6   provider of: (i) a written request for such access made by the personal representative,  
7   accompanied by a copy of the death certificate and a certified copy of the certificate of  
8   appointment as personal representative; or (ii) an order of the probate court that has jurisdiction  
9   over the estate of the decedent. The electronic mail service provider, as defined in section 5A of  
10   chapter 195, shall provide the requested records within 60 days of receipt of the request. Failure  
11   of the provider to comply within 60 days is a violation of this sub-section, entitling the requestor  
12   to apply for an appropriate order of the court directing compliance. This sub-section shall  
13   supersede provisions in the electronic mail service provider’s contractual limitations, terms and

14 conditions, or privacy policy, but it shall not supersede language in the decedent's to the  
15 contrary. Nothing herein shall prevent a provider from proving by clear and convincing  
16 evidence that it provided opt-out language whereby the decedent affirmatively declined, or stated  
17 explicitly that the decedent declined, to have the decedent's electronic mail records released after  
18 death. This sub-section shall apply to: (i) all electronic mail accounts existing as of the effective  
19 date of this sub-section, and (ii) all instances in which the electronic mail account contents have  
20 been preserved by the electronic mail service provider as of the effective date of this sub-section.

21 SECTION 2. Section 5A of chapter 195 of the General Laws, as appearing in  
22 the 2008 Official Edition, is hereby amended by adding at the end thereof the following  
23 paragraph:-

24 (5) power to access the contents of the electronic mail account of the decedent upon  
25 receipt by the electronic mail service provider of: (i) a written request for such access made by  
26 the executor or administrator, accompanied by a copy of the death certificate and a certified copy  
27 of the certificate of appointment as executor or administrator; or (ii) an order of the probate court  
28 that has jurisdiction over the estate of the decedent.

29 The electronic mail service provider shall provide the requested records within  
30 60 days of receipt of the request. Failure of the provider to comply within 60 days is a violation  
31 of this paragraph, entitling the requestor to apply for an appropriate order of the court directing  
32 compliance. This paragraph shall supersede provisions in the electronic mail service provider's  
33 contractual limitations, terms and conditions, or privacy policy, but it shall not supersede  
34 language in the decedent's to the contrary. Nothing herein shall prevent a provider from proving  
35 by clear and convincing evidence that it provided opt-out language whereby the decedent

36 affirmatively declined, or stated explicitly that the decedent declined, to have the decedent's  
37 electronic mail records released after death. This paragraph shall apply to: (i) all electronic mail  
38 accounts existing as of the effective date of this sub-section, and (ii) all instances in which the  
39 electronic mail account contents have been preserved by the electronic mail service provider as  
40 of the effective date of this sub-section.

41 For purposes of this subsection, the following words shall, unless the context otherwise  
42 requires, have the following meanings:

43 "Electronic mail service provider", any person who is an intermediary in  
44 sending or receiving electronic mail, and who provides to end-users of electronic mail services  
45 the ability to send or receive electronic mail.

46 "Electronic mail account", all electronic mail sent or received by an end-user of  
47 electronic mail services provided by an electronic mail service provider that is stored or recorded  
48 by the provider in the regular course of such services and any other electronic information stored  
49 or recorded by such provider that is directly related to the electronic mail services provided to the  
50 end-user by such provider, including, but not limited to, billing and payment information.