

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

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In the Year Two Thousand Eleven
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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.