

**SENATE . . . . . No. 661**

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**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:

*First Middlesex and Norfolk*

**SENATE . . . . . No. 661**

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By Ms. Creem, a petition (accompanied by bill, Senate, No. 661) of Cynthia S. Creem for legislation to make corrective changes in certain general and special laws. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 704 OF 2011-2012.]

**The Commonwealth of Massachusetts**

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

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 by section  
2 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the phrase “or in a newspaper  
3 designated by the register of probate in a county identified by the court” after the word  
4 “pending” in subsection (a)(3).

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

11           SECTION 3. Section 1-404 of chapter 190B of the General Laws, as inserted by section  
12 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (a) to read: “(a)  
13 If, in a formal proceeding involving trusts or estates of decedents, minors, protected persons, or  
14 incapacitated persons, and in judicially supervised settlements, or otherwise, a minor, a protected

15 person, an incapacitated person or a person not ascertained or not in being may be or may  
16 become interested in any property, real or personal, or in the enforcement or defense of any legal  
17 rights, the court in which any action, petition or proceeding of any kind relative to or affecting  
18 any such estate or legal rights is pending may, upon the representation of any party thereto, or of  
19 any person interested, appoint a suitable person to appear and act therein as guardian ad litem or  
20 next friend of such minor, protected person, incapacitated person or person not ascertained or not  
21 in being; and a judgment, order or decree in such proceedings, made after such appointment,  
22 should be conclusive upon all persons for whom such guardian ad litem or next friend was  
23 appointed.”

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

29 SECTION 5. Section 2-114 of chapter 190B of the General Laws, as inserted by section  
30 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the following sentence at the  
31 end of subsection (b): “The court may decree that the rights of succession to property under this  
32 section (or under former section 7 of chapter 210 of the General Laws) shall vest in an adopted  
33 individual as of the date of the filing of the petition for adoption.”

34 SECTION 6. Section 2-603 of chapter 190B of the General Laws, as inserted by section  
35 9 of chapter 521 of the Acts of 2008, is hereby amended by replacing the words “by  
36 representation” with the words “per capita at each generation”.

37 SECTION 7. Section 2-702 of chapter 190B of the General Laws, as inserted by section  
38 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting the phrase “except for  
39 purposes of part 3 of article VI [Uniform TOD Security Registration Act] and” from subsection  
40 (a) and by deleting the phrase “and except for a security registered in beneficiary form (TOD)  
41 under part 3 of Article VI, Uniform TOD Security Registration Act” from subsection (b).

42 SECTION 8. Section 2-706 of chapter 190B of the General Laws, as inserted by section  
43 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting subsection (a); by  
44 renumbering subsections (b), (c) and (d) as (a), (b) and (c) respectively; and by changing the  
45 words “by representation” to read “per capita at each generation” wherever they appear.

46 SECTION 9. Section 2-707 of chapter 190B of the General Laws, as inserted by section  
47 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting subsection (a); by  
48 renumbering subsections (b) and (c) as (a) and (b) respectively; and by changing the words “by  
49 representation” to read “per capita at each generation” wherever they appear.

50 SECTION 10. Section 2-801 of chapter 190B of the General Laws, as inserted by section  
51 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting the phrase “receives without  
52 objection a benefit from such interest,” from subsection (h)(4) the second time it appears, and by  
53 changing subsection (j) to read as follows: “(j) Except for the provisions of subsection (h), this  
54 section shall not abridge the right of any person to disclaim, waive, release, renounce or abandon  
55 any interest in property under any other statute or rule of law.”

56 SECTION 11. Section 3-108 of chapter 190B of the General Laws, as inserted by section  
57 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as follows:

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

59 No informal probate or appointment proceeding or formal testacy or appointment  
60 proceeding, other than a proceeding to probate a will previously probated at the testator’s  
61 domicile and appointment proceedings relating to an estate in which there has been a prior  
62 appointment, may be commenced more than 3 years after the decedent’s death, except (1) if a  
63 previous proceeding was dismissed because of doubt about the fact of the decedent’s death,  
64 appropriate probate, appointment or testacy proceedings may be maintained at any time  
65 thereafter upon a finding that the decedent’s death occurred prior to the initiation of the previous  
66 proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent  
67 proceeding; (2) appropriate probate, appointment or testacy proceedings may be maintained in  
68 relation to the estate of an absent, disappeared or missing person at any time within 3 years after  
69 the death of the person can be established; (3) a proceeding to contest an informally probated  
70 will and to secure appointment of the person with legal priority for appointment in the event the  
71 contest is successful, may be commenced within the later of 12 months from the informal  
72 probate or 3 years from the decedent’s death; (4) an informal appointment or a formal testacy or  
73 appointment proceeding may be commenced thereafter if no proceedings concerning the  
74 succession or estate administration has occurred within the 3 year period after the decedent’s  
75 death, but the personal representative has no right to possess estate assets as provided in Section  
76 3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims  
77 other than expenses of administration may not be presented against the estate; and (5) a formal  
78 testacy proceeding may be commenced at any time after 3 years from the decedent’s death for  
79 the purpose of establishing an instrument to direct or control the ownership of property passing  
80 or distributable after the decedent’s death from one other than the decedent when the property is  
81 to be appointed by the terms of the decedent’s will or is to pass or be distributed as a part of the  
82 decedent’s estate or its transfer is otherwise to be controlled by the terms of the decedent’s will.  
83 These limitations shall not apply to proceedings to construe probated wills or determine heirs of  
84 an intestate. In cases under (1) or (2) above, the date on which a testacy or appointment  
85 proceeding is properly commenced shall be deemed to be the date of the decedent’s death for  
86 purposes of other limitations provisions of this chapter which relate to the date of death.

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

95 SECTION 13. Section 3-301 of chapter 190B of the General Laws, as inserted by section  
96 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the reference in subsection  
97 (a)(6) to “section 3-610(c)” to read “section 3-610” and by changing the words “and describe the  
98 priority of the petitioner” to “describe the priority of the nominee”.

99 SECTION 14. Section 3-605 of chapter 190B of the General Laws, as inserted by section  
100 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the first three sentences to  
101 read as follows: “Any person apparently having an interest in the estate worth in excess of  
102 \$5000, or any creditor having a claim in excess of \$5000, may make a written demand that a  
103 personal representative give sureties on his bond. The demand shall be filed with the court and a  
104 copy mailed to the personal representative, if appointment and qualification have occurred.  
105 Thereupon, sureties shall be required, but the requirement ceases if the person demanding  
106 sureties ceases to be interested in the estate, or if sureties are excused as provided in section 3-  
107 604.”

108 SECTION 15. Section 3-610 of chapter 190B of the General Laws, as inserted by section  
109 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as follows:

110 Section 3-610. [Resignation by Personal Representative]

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

118 SECTION 16. Section 3-617 of chapter 190B of the General Laws, as inserted by section  
119 9 of chapter 521 of the Acts of 2008, is hereby amended by adding after subsection (b) the  
120 following subsection (c): “(c) Unless otherwise ordered by the court, the authority of any  
121 personal representative previously appointed by the court or magistrate is suspended as long as a  
122 special personal representative has authority.”

123 SECTION 17. Section 3-706 of chapter 190B of the General Laws, as inserted by section  
124 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as follows:

125 Section 3-706. [Duty of Personal Representative; Inventory and Appraisalment.]

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

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

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

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

142 SECTION 19. Section 5-101 of chapter 190B of the General Laws, as inserted by section  
143 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting: “(23.5) “Respondent”, an  
144 individual for whom the appointment of a guardian or conservator or other protective order is  
145 sought.” after subsection (23).

146 SECTION 20. Section 5-105 of chapter 190B of the General Laws, as inserted by section  
147 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the phrase “in the case of a  
148 nomination of by the will of a parent or spouse” in paragraph (2) of subsection (a) to read, “in the  
149 case of a nomination by the will of a parent or spouse”.

150 SECTION 21. Section 5-106 of chapter 190B of the General Laws, as inserted by section  
151 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the sentence “Counsel for  
152 any indigent ward, incapacitated person or person to be protected shall be compensated by the  
153 commonwealth.” in subsection (a) to read, “Counsel for any indigent ward, incapacitated person  
154 or person to be protected shall be compensated by the commonwealth or the petitioner as the  
155 court may order.”

156 SECTION 22. Section 5-107 of chapter 190B of the General Laws, as inserted by section  
157 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the term “ill person” to  
158 read “protected person” wherever it appears.

159 SECTION 23. Section 5-204 of chapter 190B of the General Laws, as inserted by section  
160 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the term “over the age of  
161 14 years” in subsection (d) to read “14 or more years of age”.

162 SECTION 24. Section 5-206 of chapter 190B of the General Laws, as inserted by section  
163 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the words “A minor” in  
164 subsection (a) to read, “A minor 14 or more years of age”.

165 SECTION 25. Section 5-303 of chapter 190B of the General Laws, as inserted by section  
166 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the phrase “the petitioner  
167 shall attach a copy” in paragraph (9) of subsection (b) to read, “the petitioner shall file with the  
168 petition”.

169 SECTION 26. Section 5-303 of chapter 190B of the General Laws, as inserted by section  
170 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting “registered” before the  
171 word “physician”, and by inserting “, certified psychiatric nurse clinical specialist, nurse  
172 practitioner” after the word “physician” in subsection (c).

173 SECTION 27. Section 5-303 of chapter 190B of the General Laws, as inserted by section  
174 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering subsection (e) as (f) and  
175 adding the following subsection (e) after subsection (d): “(e) The court may require additional  
176 medical or psychological testimony as to the mental and physical condition of the person alleged  
177 to be incapacitated or disabled and may require him to submit to examination. It may also  
178 appoint one or more persons expert in incapacity or disability, to examine such person and report  
179 their conclusions to the court.”

180 SECTION 28. Section 5-304 of chapter 190B of the General Laws, as inserted by section  
181 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the first clause of  
182 subsection (a) to read: “(a) In a proceeding for the appointment of a guardian or conservator or  
183 for protective order, notice shall be given by the petitioner to:”

184 SECTION 29. Section 5-304 of chapter 190B of the General Laws, as inserted by section  
185 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting “, if 14 or more years of  
186 age,” after the word “protected” in subsection (a)(1).

187 SECTION 30. Section 5-305 of chapter 190B of the General Laws, as inserted by section  
188 9 of chapter 521 of the Acts of 2008, is hereby amended by changing paragraph (1) of subsection  
189 (c) to read, “(1) the spouse of the incapacitated person or a person nominated pursuant to section  
190 5-301(b);”.

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

202 SECTION 32. Section 5-309 of chapter 190B of the General Laws, as inserted by section  
203 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the phrase: “of incapacitated  
204 persons” after the word “guardianships” in subsection (c).

205 SECTION 33. Section 5-309 of chapter 190B of the General Laws, as inserted by section  
206 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (g) to read: “(g)  
207 No guardian shall have the authority to admit an incapacitated person to a nursing facility except  
208 upon a specific finding by the court that such admission is in the incapacitated person's best  
209 interest or unless: (1) the admission is for 60 days or less, (2) any person authorized to sign a  
210 Medical Certificate recommends such admission, (3) all interested persons and the incapacitated  
211 person do not object, 4) on or before such admission a written Notice of Intent to Admit the  
212 Incapacitated Person to a Nursing Facility for Short Term Services has been filed by the guardian  
213 in the appointing court and a copy has been served in hand on the Incapacitated Person and  
214 provided to the Nursing Facility and 5) the Incapacitated Person is represented by counsel or  
215 counsel is appointed forthwith. The Notice of Intent to Admit the Incapacitated Person to a  
216 Nursing Facility for Short Term Services shall be on a form promulgated and approved by the  
217 Chief Justice of the Probate and Family Court.”

218 SECTION 34. Section 5-404 of chapter 190B of the General Laws, as inserted by section  
219 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (b)(11) to read:  
220 “(11) except for a conservatorship of a minor filed pursuant to section 5-401(b), a statement:

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

225 (B) of the nature of any circumstance which makes it impossible to obtain a medical  
226 certificate or clinical team report which shall be supported by affidavit or affidavits meeting the



227 requirements set forth in Massachusetts Rule of Civil Procedure 4.1(h), in which case the court  
228 may waive or postpone the requirement of filing of a medical certificate or clinical team report.

229 SECTION 35. Section 5-407 of chapter 190B of the General Laws, as inserted by section  
230 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering subsections (b)(5),  
231 (b)(6) and (b)(7) as (b)(6), (b)(7) and (b)(8) respectively; and by adding after subsection (b)(4)  
232 the following subsection (b)(5): “(5) any required clinical team report is dated and the  
233 examinations have taken place within 180 days prior to the filing of the petition;”

234 SECTION 36. Section 5-411 of chapter 190B of the General Laws, as inserted by section  
235 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the reference in subsection  
236 (a) to “sections 5-208, 5-305 and 5-410” to read “sections 5-208, 5-307 and 5-410.”

237 SECTION 37. Section 5-413 of chapter 190B of the General Laws, as inserted by section  
238 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the last sentence to read,  
239 “The court may order that such compensation be paid by any party or parties as it shall  
240 determine.”

241 SECTION 38. Section 5-418 of chapter 190B of the General Laws, as inserted by section  
242 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the following sentence at the  
243 end of subsection (e): “Such discharge shall forever exonerate the conservator and his sureties  
244 from all liability under such decree unless his account is impeached for fraud or manifest error.”

245 SECTION 39. Section 5-423 of chapter 190B of the General Laws, as inserted by section  
246 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering the second subsection  
247 (c) as subsection (d).

248 SECTION 40. Section 5-429 of chapter 190B of the General Laws, as inserted by section  
249 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the word “incapacitated” in  
250 subsection (b) to read, “disabled”.

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

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

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

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

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

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