SENATE DOCKET, NO. 1228 FILED ON: 1/18/2013

SENATE . . . . . No. 702

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia S. Creem	*First Middlesex and Norfolk*
Kay Khan	*11th Middlesex*
Thomas P. Conroy	*13th Middlesex*
Michael O. Moore	*Second Worcester*
Patricia D. Jehlen	*Second Middlesex*

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By Ms. Creem, a petition (accompanied by bill, Senate, No. 702) of Cynthia S. Creem, Kay Khan, Thomas P. Conroy, Michael O. Moore and other members of the General Court for legislation relative to access to a decedent's electronic mail accounts. The Judiciary.

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:

SECTION 1. Subsection (a) of section 3-715 of chapter 190B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by adding the following paragraph:-

(28) gain reasonable access to the contents of an electronic mail account of the decedent upon receipt by the electronic mail service provider of: (i) a notarized written request for such access made by the personal representative, accompanied by a copy of the death certificate and a certified copy of the letter of appointment as personal representative; or (ii) an order of the probate court that has jurisdiction over the estate of the decedent. The electronic mail service provider shall provide access to the requested records within 60 days of receipt of the request. Failure of the provider to comply within said 60 days shall be a violation of this paragraph, entitling the requestor to apply for an appropriate order of the court directing compliance. This paragraph shall supersede provisions in the electronic mail service provider's contractual limitations, terms and conditions or privacy policy; provided, however, that access to the contents of an electronic mail account shall not be provided if the provider shows, by clear and convincing evidence, that it offered opt-out language, separate and distinct from the standard agreement or terms of service, whereby the decedent affirmatively declined to have the decedent's electronic mail account released after death. This paragraph shall not supersede language in the decedent's will to the contrary. For purposes of this paragraph, the following words shall, unless the context otherwise requires, have the following meanings:

"Electronic mail account", all electronic mail sent, received or created by an end-user of electronic mail services provided by an electronic mail service provider that is stored or recorded by the provider in the regular course of such services and any other electronic

information stored or recorded by such provider that is directly related to the electronic mail services provided to the end-user by such provider, including, but not limited to, billing and payment information; provided, however, that this definition shall not apply to accounts created, administered, or hosted by an employer for an employee and intended to be used for professional purposes.

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

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

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

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