

SENATE No. 822

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone 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: | |
|-----------------------------|------------------------------------|------------------|
| <i>Cynthia Stone Creem</i> | <i>First Middlesex and Norfolk</i> | |
| <i>Antonio F. D. Cabral</i> | <i>13th Bristol</i> | <i>1/31/2017</i> |
| <i>Alice Hanlon Peisch</i> | <i>14th Norfolk</i> | <i>2/3/2017</i> |

SENATE No. 822

By Ms. Creem, a petition (accompanied by bill, Senate, No. 822) of Cynthia S. Creem, Antonio F. D. Cabral and Alice Hanlon Peisch for legislation relative to access to a decedent's electronic mail accounts. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 758 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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:

1 SECTION 1. Subsection (a) of section 3-715 of chapter 190B of the General Laws, as
2 appearing in the 2014 Official Edition, is hereby amended by adding the following paragraph:

3 (28) gain reasonable access to the contents of an electronic mail account of the decedent
4 upon receipt by the electronic mail service provider of: (i) a notarized written request for such
5 access made by the personal representative, accompanied by a copy of the death certificate and a
6 certified copy of the letter of appointment as personal representative; or (ii) an order of the
7 probate court that has jurisdiction over the estate of the decedent. The electronic mail service
8 provider shall provide access to the requested records within 60 days of receipt of the request.
9 Failure of the provider to comply within said 60 days shall be a violation of this paragraph,
10 entitling the requestor to apply for an appropriate order of the court directing compliance. This

11 paragraph shall supersede provisions in the electronic mail service provider’s contractual
12 limitations, terms and conditions or privacy policy; provided, however, that access to the
13 contents of an electronic mail account shall not be provided if the provider shows, by clear and
14 convincing evidence, that it offered opt-out language, separate and distinct from the standard
15 agreement or terms of service, whereby the decedent affirmatively declined to have the
16 decedent’s electronic mail account released after death. The purpose of this act is to allow the
17 personal representative to have access to the contents of a decedent’s electronic mail account
18 (unless otherwise provided herein) solely for fiduciary purposes in performing his or her duties
19 as a personal representative and each such personal representative shall be subject to the duties
20 and responsibilities set forth in the Massachusetts uniform probate code and all other applicable
21 state law pertaining to personal representatives. The provisions of this act shall be subject to
22 copyright law and all other applicable federal law. Electronic mail service providers and their
23 officers, employees and agents are immune from liability for any action done in good faith in
24 compliance with this act. This paragraph shall not supersede language in the decedent’s will to
25 the contrary. For purposes of this paragraph, the following words shall, unless the context
26 otherwise requires, have the following meanings:

27 “Electronic mail account”, all electronic mail sent, received or created by an end-user of
28 electronic mail services provided by an electronic mail service provider that is stored or recorded
29 by the provider in the regular course of such services and any other electronic information stored
30 or recorded by such provider that is directly related to the electronic mail services provided to the
31 end-user by such provider, including, but not limited to, billing and payment information;
32 provided, however, that this definition shall not apply to accounts created, administered, or
33 hosted by an employer for an employee and intended to be used for professional purposes.

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

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

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

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