

HOUSE No. 4327

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, February 8, 2024.

The committee on the Judiciary, to whom were referred the petition (accompanied by bill, Senate, No. 939) of Cynthia Stone Creem for legislation to establish the Massachusetts Interstate Depositions and Discovery Act, and the petition (accompanied by bill, House, No. 1450) of Michael S. Day for legislation to modify the rules for taking depositions outside the Commonwealth and to adopt the uniform interstate depositions and discovery act, reports recommending that the accompanying bill (House, No. 4327) ought to pass.

For the committee,

MICHAEL S. DAY.

HOUSE No. 4327

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to modify the rules for taking depositions outside the Commonwealth and to adopt the uniform interstate depositions and discovery act.

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. Chapter 223A of the General Laws, as appearing in the 2022 Official
2 Edition, is hereby amended by inserting, after section 14, - the following section:-

3 Section 15. (a) As used in this section, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:

5 “Foreign action”, a court action or proceeding brought or pending in a foreign
6 jurisdiction.

7 "Foreign jurisdiction", a state other than the commonwealth of Massachusetts.

8 "Foreign subpoena", a subpoena issued under authority of a court of record in a foreign
9 jurisdiction.

10 "Person", an individual, corporation, business trust, estate, trust, partnership, limited
11 liability company, association, joint venture, public corporation, government, or governmental
12 subdivision, agency or instrumentality, or other legal entity.

13 "State", a state of the United States, the District of Columbia, Puerto Rico, the United
14 States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession
15 subject to the jurisdiction of the United States.

16 "Subpoena", a document, however denominated, issued under authority of a court of
17 record requiring a person to: (i) attend and give testimony at a deposition; (ii) produce and permit
18 inspection and copying of designated books, documents, records, electronically stored
19 information or tangible things in the possession, custody or control of the person; or (iii) permit
20 inspection of premises under the control of the person.

21 (b)(i) To request the issuance of a subpoena under this section, a party shall submit a
22 foreign subpoena or court order from a foreign jurisdiction to a clerk of court in the county in
23 this commonwealth in which discovery is sought, along with: (A) a Massachusetts subpoena for
24 signature by the clerk; (B) a list of all counsel or unrepresented parties in the foreign action, their
25 addresses, telephone numbers and email addresses; and (C) the required filing fee designated and
26 published by the court in which the foreign subpoena or court order from the foreign jurisdiction
27 is submitted. A request for the issuance of a subpoena under this section shall not constitute an
28 appearance in the courts of the commonwealth. An unrepresented party may request issuance of
29 a subpoena pursuant to this section; provided, however, that they may sign the foreign subpoena
30 only if authorized by the laws of the foreign jurisdiction.

31 (ii) When a party submits a foreign subpoena to a clerk of court, the clerk, in accordance
32 with the court's procedure, shall promptly issue a subpoena for service on the person to which the
33 foreign subpoena is directed.

34 (iii) A subpoena issued under this section shall: (A) incorporate the terms used in the
35 foreign subpoena; (B) contain the names, addresses, telephone numbers and email addresses of
36 all counsel of record and unrepresented parties in the foreign action ; and (C) include the case
37 caption and case or docket number of the proceeding to which the subpoena relates, along with
38 the name and address of the court issuing the subpoena.

39 (c) Notwithstanding subsection (b), if a party to a foreign action retains an attorney
40 licensed to practice in the commonwealth, and that attorney receives the original or a true copy
41 of the foreign subpoena, the attorney may issue a subpoena under this section.

42 (d) Rule 45 of the Massachusetts Rules of Civil Procedure shall apply to subpoenas
43 issued under this section. A subpoena issued under this section shall be served in compliance
44 with Rule 45(c) of the Massachusetts Rules of Civil Procedure.

45 (e) An application to the court for a protective order or to enforce, quash or modify a
46 subpoena issued under this section shall comply with Rules 26(c) and 45(d)(1) of the
47 Massachusetts Rules of Civil Procedure and be submitted to the applicable court in the county in
48 which discovery is sought.

49 (f) In applying and construing this uniform act, consideration shall be given to the need to
50 promote uniformity of the law with respect to its subject matter among states that enact it.

51 (g) If the foreign jurisdiction has not enacted provisions substantially similar to this
52 section, the foreign subpoena shall comply with the requirements of section 11 of this chapter.

53 SECTION 2. Section 1 shall take effect on January 1, 2025 and shall apply to discovery
54 requests in cases pending as of that date.