SENATE DOCKET, NO. 230 FILED ON: 1/9/2025

SENATE . . . . . No. 1048

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:
Cynthia Stone Creem	*Norfolk and Middlesex*

SENATE DOCKET, NO. 230 FILED ON: 1/9/2025

SENATE . . . . . No. 1048

By Ms. Creem, a petition (accompanied by bill, Senate, No. 1048) of Cynthia Stone Creem for legislation relative to access to a decedent's electronic mail accounts. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *930* OF 2023-2024.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

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. The General Laws are hereby amended by inserting after chapter 201F the following chapter:-

CHAPTER 201G. MASSACHUSETTS REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.

Section 1. Short title

This chapter may be cited as the Massachusetts Revised Uniform Fiduciary Access to Digital Assets Act.

Section 2. Definitions

In this chapter:

(1) “Account” means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

(2) “Agent” means an attorney-in-fact granted authority under a durable or nondurable power of attorney.

(3) “Carries” means engages in the transmission of an electronic communication.

(4) “Catalogue of electronic communications” means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) “Conservator” means a person appointed by a court to manage the estate of a protected person and includes a limited conservator, temporary conservator, special conservator, and those individuals specifically authorized under section 5-408 of chapter 190B.

(6) “Content of an electronic communication” means information concerning the substance or meaning of the communication which:

(A) has been sent or received by a user;

(B) is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(C) is not readily accessible to the public.

(7) “Court” means the probate and family court department of the trial court and any other Massachusetts court having appellate jurisdiction over any ruling by the probate and family court.

(8) “Custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(9) “Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user.

(10) “Digital asset” means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) “Electronic communication” has the meaning set forth in 18 U.S.C. Section 2510(12), as amended.

(13) “Electronic communication service” means a custodian that provides to a user the ability to send or receive an electronic communication.

(14) “Fiduciary” means an original, additional, or successor personal representative, conservator, agent or trustee.

(15) “Information” means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(16) “Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(17) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(18) “Personal representative” means an executor, administrator, special administrator, or person that performs substantially the same function under law of this commonwealth other than this chapter.

(19) “Power of attorney” means a record that grants an agent authority to act in the place of a principal.

(20) “Principal” means an individual who grants authority to an agent in a power of attorney.

(21) “Protected person” means an individual for whom a conservator has been appointed. The term includes an individual for whom a petition for the appointment of a conservator is pending.

(22) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) “Remote computing service” means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Section 2510(14), as amended.

(24) “Terms of service agreement” means an agreement that controls the relationship between a user and a custodian.

(25) “Trustee” means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by the court.

(26) “User” means a person that has an account with a custodian.

(27) “Will” includes a codicil, testamentary instrument that only appoints a personal representative, and an instrument that revokes or revises a testamentary instrument.

Section 3. Applicability

(a) This chapter applies to:

(1) a fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this chapter;

(2) a personal representative acting for a decedent who died before, on, or after the effective date of this chapter;

(3) a conservatorship proceeding commenced before, on, or after the effective date of this chapter; and

(4) a trustee acting under a trust created before, on, or after the effective date of this chapter.

(b) This chapter applies to a custodian if the user resides in this commonwealth or resided in this commonwealth at the time of the user’s death.

(c) This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

Section 4. Direction for disclosure of digital assets.

(a) A user may use an online tool to direct the custodian to disclose or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney or other record made prior to the date of the direction made by the user using an online tool.

(b) The user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user, and the provisions of such will or other record shall override a contrary direction by the user using an online tool that was made prior to the date of such will or other record.

(c) A user's direction under subsection (a) or (b) overrides (i) a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service and (ii) a contrary prior direction from the user under subsection (a) or (b).

(d) If the online tool has not been utilized by the user or if the custodian has not provided an online tool and, in either case, if no direction regarding some or all of the digital assets is provided to the fiduciary in a will or other record, the fiduciary may petition a court for access to

some or all of the user's digital assets. The court shall grant such access unless it finds that the fiduciary is not acting in good faith or that such access is prohibited by applicable federal law.

Section 5. Terms-of-service agreement

(a) Except as otherwise provided in Section 4, this chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(b) Except as otherwise provided in Section 4, this chapter does not give a fiduciary any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary acts or represents.

(c) A fiduciary's access to digital assets may be modified or eliminated by a user, by federal law, or, subject to Section 4, by a terms-of-service agreement if the user has not provided a direction under Section 4(a) or Section 4(b) or the fiduciary has not obtained a court order issued under Section 4(d).

Section 6. Procedure for disclosing digital assets

(a) When disclosing digital assets of a user under this chapter, the custodian shall, in accordance with the direction provided under Section 4(a) or Section 4(b) or a court order issued under Section 4(d):

(1) if requested by the fiduciary or designated recipient, grant a fiduciary or designated recipient full access to the user's account;

(2) subject to Section 6(d), grant a fiduciary or designated recipient partial access to the user's account to the extent that such partial access is requested by a fiduciary or designated recipient; or

(3) at the option of the custodian, provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

(c) A custodian need not disclose under this chapter a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(1) a subset limited by date of the user's digital assets;

(2) all of the user's digital assets to the fiduciary or designated recipient;

(3) none of the user's digital assets; or

(4) all of the user's digital assets to the court for review in camera.

Section 7. Disclosure of content of electronic communications of deceased user

If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) an attested copy of the letter of appointment of the personal representative or a small estate affidavit or court order;

(4) unless the deceased user provided direction using an online tool, (i) a copy of the user's will, trust or other record evidencing the user's consent to disclosure of the content of electronic communications, (ii) a court order acknowledging that the user consented to the disclosure of the content of electronic communications to the personal representative under the user's will, trust or other record or (iii) a court order issued under Section 4(d); and

(5) if requested by the custodian:

(A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) evidence linking the account to the user; or

(C) a finding by the court that the deceased user had a specific account with the custodian, identifiable by the information specified in subparagraph (A).

Section 8. Disclosure of other digital assets of deceased user

Unless the deceased user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) an attested copy of the letter of appointment of the representative or a small estate affidavit or court order; and

(4) if requested by the custodian:

(A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) evidence linking the account to the user;

(C) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(D) a finding by the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A); or

(ii) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

Section 9. Disclosure of content of electronic communications of principal

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) if requested by the custodian:

(A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(B) evidence linking the account to the principal.

Section 10. Disclosure of other digital assets of principal

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(1) a written request for the disclosure in physical or electronic form;

(2) an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect and;

(4) if requested by the custodian:

(A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(B) evidence linking the account to the principal.

Section 11. Disclosure of digital assets held in trust when trustee is original user

Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

Section 12. Disclosure of contents of electronic communications held in trust when trustee is not original user

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried,

maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under chapter 203E that includes consent to disclosure of the content of electronic communications to the trustee;

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(B) evidence linking the account to the trust.

Section 13. Disclosure of other digital assets held in trust when trustee is not original user

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under chapter 203E;

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(B) evidence linking the account to the trust.

Section 14. Disclosure of digital assets to conservator of protected person

(a) After an opportunity for a hearing under chapter 190B, the court may grant a conservator access to the digital assets of a protected person.

(b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an attested copy of the court order that gives the conservator authority over the digital assets of the protected person; and

(3) if requested by the custodian:

(A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(B) evidence linking the account to the protected person.

(c) A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by an attested copy of the court order giving the conservator authority over the protected person's property.

Section 15. Fiduciary duty and authority

(a) The user's rights in digital assets, including the content of electronic communications, constitute property of the estate of the user to be managed consistent with the legal duties imposed on a fiduciary charged with managing tangible property, including:

(1) the duty of care;

(2) the duty of loyalty; and

(3) the duty of confidentiality.

(b) A fiduciary's authority with respect to a digital asset of a user:

(1) except as otherwise provided in Section 4, is subject to the applicable terms of service;

(2) is subject to other applicable law, including copyright law;

(3) is limited by the scope of the fiduciary's duties; and

(4) may not be used to impersonate the user.

(c) A fiduciary with authority over the property of a decedent, protected person, principal or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including section 120F of chapter 266 of the General Laws.

(e) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal, or settlor:

(1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including section 120F of chapter 266 of the General Laws.

(f) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(g) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(1) if the user is deceased, a certified copy of the death certificate of the user;

(2) an attested copy of the letter of appointment of the representative or a small estate affidavit or court order, power of attorney, or trust giving the fiduciary authority over the account; and

(3) if requested by the custodian:

(A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) evidence linking the account to the user; or

(C) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A).

Section 16. Custodian compliance and immunity

(a) Not later than 60 days after receipt of the information required under sections 7 through 14, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(b) A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

(c) A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(d) This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order which:

(1) specifies that an account belongs to the protected person or principal;

(2) specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(3) contains a finding required by law other than this chapter.

(e) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

Section 17. Uniformity of application and construction

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

Section 18. Relation to Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or

supersede section 101(c) of said act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of said act, 15 U.S.C. section 7003(b).

Section 19. Severability

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 2. This act shall take effect 1 year after its passage.