

SENATE No. 00754

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 passage of the accompanying bill:

An Act allowing access to a decedent's electronic mail accounts.

PETITION OF:

NAME:

Cynthia S. Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

SENATE No. 00754

By Ms. Creem, petition (accompanied by bill, Senate, No. 754) of Creem for legislation to allow access to a decedent's electronic mail accounts [Joint Committee on the Judiciary].

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
—————

An Act allowing 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. Paragraph (a) of section 3-715 of chapter 190B of the General Laws, as
2 appearing in the 2008 Official Edition, is hereby amended by adding at the end thereof the
3 following sub-section:-

4 (28) gain reasonable access to the contents of the electronic mail account, as defined in
5 section 5A of chapter 195, of the decedent upon receipt by the electronic mail service provider
6 of: (i) a written request for such access made by the personal representative, accompanied by a
7 copy of the death certificate and a certified copy of the certificate of appointment as personal
8 representative; or (ii) an order of the probate court that has jurisdiction over the estate of the
9 decedent. The electronic mail service provider, as defined in section 5A of chapter 195, shall
10 provide the requested records within 60 days of receipt of the request. Failure of the provider to
11 comply within 60 days is a violation of this sub-section, entitling the requestor to apply for an
12 appropriate order of the court directing compliance. This sub-section shall supersede provisions

13 in the electronic mail service provider's contractual limitations, terms and conditions, or privacy
14 policy, but it shall not supersede language in the decedent's to the contrary. Nothing herein shall
15 prevent a provider from proving by clear and convincing evidence that it provided opt-out
16 language whereby the decedent affirmatively declined, or stated explicitly that the decedent
17 declined, to have the decedent's electronic mail records released after death. This sub-section
18 shall apply to: (i) all electronic mail accounts existing as of the effective date of this sub-section,
19 and (ii) all instances in which the electronic mail account contents have been preserved by the
20 electronic mail service provider as of the effective date of this sub-section.

21 SECTION 2. Section 5A of chapter 195 of the General Laws, as appearing in the 2008
22 Official Edition, is hereby amended by adding at the end thereof the following paragraph:-

23 (5) power to access the contents of the electronic mail account of the decedent upon receipt by
24 the electronic mail service provider of: (i) a written request for such access made by the executor
25 or administrator, accompanied by a copy of the death certificate and a certified copy of the
26 certificate of appointment as executor or administrator; or (ii) an order of the probate court that
27 has jurisdiction over the estate of the decedent.

28 The electronic mail service provider shall provide the requested records within 60 days
29 of receipt of the request. Failure of the provider to comply within 60 days is a violation of this
30 paragraph, entitling the requestor to apply for an appropriate order of the court directing
31 compliance. This paragraph shall supersede provisions in the electronic mail service provider's
32 contractual limitations, terms and conditions, or privacy policy, but it shall not supersede
33 language in the decedent's to the contrary. Nothing herein shall prevent a provider from proving
34 by clear and convincing evidence that it provided opt-out language whereby the decedent

35 affirmatively declined, or stated explicitly that the decedent declined, to have the decedent's
36 electronic mail records released after death. This paragraph shall apply to: (i) all electronic mail
37 accounts existing as of the effective date of this sub-section, and (ii) all instances in which the
38 electronic mail account contents have been preserved by the electronic mail service provider as
39 of the effective date of this sub-section.

40 For purposes of this subsection, the following words shall, unless the context otherwise requires,
41 have the following meanings:

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

45 “Electronic mail account”, all electronic mail sent or received by an end-user of
46 electronic mail services provided by an electronic mail service provider that is stored or recorded
47 by the provider in the regular course of such services and any other electronic information stored
48 or recorded by such provider that is directly related to the electronic mail services provided to the
49 end-user by such provider, including, but not limited to, billing and payment information.